

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Greece

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Executive summary

Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC (the employment non-discrimination Directive) has been transposed into Greek law jointly with Directive 2000/43/EC, (the general non discrimination Directive), by Law 3304/05.

No substantial provision of the Law seems to raise specific problems or questions directly related to discrimination based on sexual orientation. The main substantial issue is the limited scope of the law: it only covers discrimination in terms of employment and occupation conditions, but not in other fields.

The procedural arrangements of the Law, on the other hand, seem to be highly complex and inefficient. For one thing, the fact that victims may make use of the regular administrative law remedies does not allow for a proper examination of complaints. Further, the fact that there are three different (!) equality bodies, each competent to hear and deal with different kinds of complaints, further complicates the situation. Finally, the inactivity of the equality bodies concerning the dissemination of the Law and of rights thereby accruing to individuals has been proverbial.

The irrefutable proof that the system was badly set up and operates inefficiently is that none of the complaints were successfully dealt with by two of the equality bodies: namely the Employment Inspection Body and the Equal Treatment Committee. Only the Greek Ombudsperson had dealt with such cases. From 2010 to 2013 he dealt with 4 cases concerning discrimination on the grounds of sexual orientation and 6 cases concerning discrimination on the grounds of gender identity.

Apart from the above mentioned cases which were dealt by the Greek Ombudsperson, from 2010 to 2013 there was no important change since no judicial decision by any court or tribunal to apply the law on the grounds of discrimination of sexual orientation and gender identity has been taken. In the last few years, on a couple of occasions, the discriminatory refusal to provide services on the basis of sexual orientation has been condemned, but on bases other than the “Non-discrimination Law”.

Freedom of movement

Under Greek law, ‘free’ partnerships between non-married persons have only been recognised by Law 3719/2008, only in respect to opposite-sex couples.

Over the last period, there has been a very important judgment issued by the European Court of Human Rights. More specifically, four same-sex couples lodged an application before the European Court of Human Rights. They complained that, by excluding them from the scope of the law, the Greek State had introduced a distinction which unlawfully discriminated against them. In its judgment in the joint cases of *Vallianatos and others v. Greece* delivered on 7.11.2013, the Grand Chamber of the European Court of Human Rights ruled that Greece had violated article 14 (prohibition of discrimination) taken together with article 8 (right to respect for private and family life) of the European Convention on Human Rights. Furthermore, a couple of same sex marriages celebrated by a progressive Mayor were annulled by the Courts of both first and second instance. Therefore, EU LGBT citizens may gain the right to stay in Greece on their own right, provided they fulfil the relevant conditions, but not as family members. LGBTs who are not EU citizens, have no right to enter and stay in Greece as family

members neither of Greek nor of other EU citizens. The same is true for their children.

Asylum and Subsidiary Protection

Greece has a surprisingly low percentage of recognition of refugee status under the Geneva Convention or otherwise. No official statistics exist on the grounds on which a) protection claims are being submitted or b) refugee status is being granted. Even if such statistics did exist, sexual orientation would not figure as a category of its own, but would come as a sub-category of ‘persons persecuted for reasons of membership of a particular social group’.

Following the enactment of Law 3907/2011, and the operation of the Special Asylum Service and the First Reception Service in 2013, the situation over the last period as regards the examination of asylum applications and the granting of refugee status has significantly improved. However, sexual orientation still does not figure as a category of its own.

There are no binding or any other clear rules on whether LGBT are considered as belonging to a particular social group. In practice, however, there have been some cases where asylum has been granted to people who have been persecuted because of their sexual orientation. These are very few, nonetheless, compared to the total number of the relevant claims, given that the vast majority of people seeking asylum in Greece come from Iraq and Iran, countries particularly hostile to LGBTs.

In view of the findings above and those exposed under ‘Freedom of Movement’ it comes as no surprise that ‘Family reunification’ for the same-sex partner of an individual having obtained refugee status in Greece is not an issue.

Family Reunification

The ‘Family Reunification’ Directive 2003/86/EC has been transposed into Greek law by Presidential Decree (PD) 131/2006.¹ Like in all other instances where giving rights to same-sex partners is at stake, the legislator’s response is outright negative. The law makes no mention whatsoever of non-married partners, regardless of whether they are of the same or opposite sex from the sponsor. Therefore, no LGBT partners of third country nationals residing in Greece are admitted for family reunification.

Over the last period, no change has occurred.

Freedom of Assembly

Pride Parades’ have been continuously held in downtown Athens from 2005 onwards. Several ‘Pride Assemblies’ had been publicly held before 2005 in parks and squares of Athens. All necessary permissions have always been obtained without any major hurdle or delay. No homophobic demonstration or other collective manifestation has ever taken place in Greece. The recent Pride Parades have attracted an increasing number of attendees: an estimated number of 5,000 people attended the 2009 Pride Parade, compared to an estimate of 2,000 in 2007 and a mere 500 people in 2005. The police have readily offered their protection to the events, but had never had to intervene in incidents openly driven by homophobia. Athens Pride

¹ Greece, ‘Harmonisation of the Hellenic Legislation with the Directive 2003/86/EC regarding the right of family reunion’ (*‘Εναρμόνιση της ελληνικής νομοθεσίας με την Οδηγία 2003/86/ΕΚ σχετικά με το δικαίωμα οικογενειακής επανένωσης’*), Presidential Decree (PD) 131/2006, OG A’ 143/13.7.2006, available at: www.inegsee.gr/equal/equal2/nomothesia/ethniki/%CE%A6%CE%95%CE%9A143%CE%9113-7-2006.pdf (last accessed at: 2 June 2014).

has a dedicated website with a wealth of relevant information (www.athenspride.eu/v2/). Over the last reporting period, Pride Parades have also been held in Greece's second largest city, Thessaloniki. Since 2010 to this day, 15 demonstrations in support of LGBT rights have been held across the country. During the same period 3 homophobic demonstrations have also taken place.

Criminal Law – Hate speech

Hate speech in Greece is regulated exclusively by Law 927/1979. This law, however, only incriminates hate speech based on racial origin, nationality and religion. Sexual orientation does not figure among the grounds on which hate speech is prohibited and, therefore, no specific protection is offered to LGBTs. Moreover, Law 927/1979 has been idle for many years and has only been applied recently, and only in cases involving Jews and Romanis. Therefore, an extensive application of the law to cover sexual orientation is not a likely development. Victims of hate speech may use the Civil Code remedies if their name, personality, right to family life etc. are violated. These remedies, however, are of limited interest to LGBTs.

Over the last period, several bills were tabled with the aim to reform the legislative framework and modify the so-called anti-discrimination law, but none passed. None of the legislative initiatives by the ruling party included in the scope of the law possible discrimination on the ground of sexual orientation or gender identity.

In the Penal Code, homophobia became a general aggravating factor following a 2008 modification of the Penal Code in 2008 and 2013 with regard to the calculation of the penalty. To date, however, no judicial application of this new piece of legislation may be identified. Conversely, Article 347 of the Penal Code incriminates some homosexual practices, clearly distinguishing them from heterosexual ones. This clearly discriminatory provision has been denounced time and again by LGBTs, their associations and several NGOs, and its abolition is expected in the foreseeable future. However, no general 'Lithuania-like' law exists in Greece.

Transgender issues

Trans people under the Greek legal system are a non-issue, since there is not a single legal text or judicial decision that refers to them. It is not clear whether trans people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on the basis of sex.

Since the previous report, there has been one change concerning the legislation. More precisely, The first piece of legislation that expressly stipulates the case of gender identity is article 66 of Law 4139/2013, which now states that the commission of a criminal act motivated by hate on the grounds of race, colour, religion, origins, national or ethnic origin, or sexual orientation, or gender identity constitutes an aggravating circumstance and the sentence imposed may not be suspended.

This notwithstanding, sex reassignment is practiced in Greece and has, at least once, been covered by the general healthcare and pension fund (IKA). After sex modification is successfully operated, the person has the right to change his/her name following a relatively straightforward procedure. Marriage is also possible with a person of the opposite sex – post surgery.

Intersex

Under Greek legal system, intersex people are not covered by the law.

Not a single presidential decree or ministerial decision has ever been issued on the status of Intersex people, and no judicial decision has ever been issued concerning intersex issues. It is also not clear whether intersex people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on basis of sex.

Intersex people are registered either as female or as male.

Miscellaneous

Homophobia within Greek society is existent but dormant. One may observe a) indifference on the part of non-concerned parties and b) deception and lack of trust on the part of parties directly concerned (LGBTs and their organisations). This tacit acquiescence to homophobia is nurtured by a number of factors which are peculiar to Greek society. At least six factors may be pointed out: a) the dominant role of the Greek Orthodox Church in Greek society and its openly homophobic stance, b) the macho and/or homophobic discourse of the vast majority of politicians, c) the negative imagery put forward by the media, d) the role of the police, e) the absence of sexual education in schools and f) the unwillingness of all the governments to pay attention to substantiated LGBT claims and legislate in accordance.

Good Practices

Almost non-existent.

Conclusions

Homophobia and discrimination on the basis of sexual orientation remain, to a large extent, 'unspoken' legal issues under the Greek legal system. While the social realities are there, the legal system is catching up with great delay and, often, in a (deliberately?) inefficient manner.

For one thing, in Greece discrimination on the basis of sexual orientation is dealt with along with all other forms of prohibited discriminations, if at all. Second, Greece has fulfilled its obligations under the relevant EC directives in a 'minimalist' and procedurally cumbersome manner. Third, Greece does not recognise family outside marriage, nor does it pay attention to trans issues. Finally, the institution of asylum has been severely suffering in the country which invented it.

Therefore, there has been no judgment by any court or tribunal specifically concerning discrimination on the basis of sexual orientation. There have been virtually no claims before the equality bodies either. This shows a fundamental distrust in the procedures and bodies involved – which may be justified in view of the very poor visibility, let alone effectiveness, of these bodies. A further reason which may partly explain the fact that the organisations involved are not as active as one would expect, is that they often are 'one door, many doorbells', i.e. the same persons bear various labels and are charged with all sorts of responsibilities and functions.

The lack of any statistical data, official or other, is a striking feature of the Greek situation concerning homophobia. Efforts to make up for this lack of information, through direct contacts with stakeholders and competent bodies, have failed to bear fruit. This is presented in Annex III of the present study, where all the bodies contacted and their responses are being presented.

A. Implementation of Employment Directive 2000/78/EC

Directive 2000/78/EC (the non-discrimination employment Directive) has been transposed into Greek law jointly with Directive 2000/43/EC, (the general non-discrimination Directive), by Law 3304/05 {Official Gazette (FEK) A 16, 27/01/05, p. 67-72, hereinafter ‘the Law’}. The choice of a formal law for the implementation of the above Directives is significant, in view of the fact that the vast proportion of EC Directives is being transposed into Greek law by presidential decrees (PDs). This choice has been dictated by legal considerations, as the Directives touch upon both labour and criminal law. Moreover, this choice carries a clear political statement as it shows the importance that the Greek government attaches to the principle of non-discrimination, compared to other more ‘functional’ rules of EC law. An undesired effect of this choice, however, has been that the Supreme Administrative Jurisdiction has been deprived of the opportunity to exercise its preventive control of legality over the transposition text, as the Jurisdiction’s competence only covers PDs – not formal laws.

The Law has six Chapters: **Chapter 1** describes the objective of the Law and defines the concept of equality of treatment. **Chapter 2** transposes the substantial provisions of Directive 2000/43/EC (general prohibition of discrimination on the basis of race or ethnic origin). **Chapter 3** transposes the substantial provisions of Directive 2000/78/EC (prohibition of discrimination at the work place, based ie.. on sexual orientation). **Chapter 4** bears the title ‘Protection’. It sets civil, administrative and criminal rules and procedures for the protection of individuals against discrimination. Further, it transposes the principles a) of reversal of the burden of proof and b) that plaintiffs may be represented by other ‘legal persons’, provided that their consent is unequivocally given. **Chapter 5** concerns the ‘Promotion of equal treatment’ which is to be achieved in two ways: a) through social dialogue with representative associations of the various categories of protected persons, conducted by the Economic and Social Committee and b) the nomination of three different bodies responsible for the extra-judicial examination of allegations of discrimination. **Chapter 6** contains final and transitional provisions.

Several commentators have underlined the pros and cons of the Law, but none has ever focused on the issue of discrimination on the basis of sexual orientation.

No substantial provision of the Law (contained in Chapters 1-3) seems to be raising specific problems or questions directly related to discrimination based on sexual orientation. The only issue, raised by the National Committee for Human Rights (NCHR) (*Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου*) and by Amnesty International and taken over by the Economic and Social Council of Greece (ESC) (*Οικονομική και Κοινωνική Επιτροπή*) in its first report for the implementation of the law,² is a translation problem. The word ‘sexual’ has two translations in Greek: one, more formal and etymologically linked to procreation (*γενετήσιος*) and another one more colloquial and closer semantically to pleasure (*σεξουαλικός*). In the Law the former is being used and this could entail some bias against persons who do not aim to procreate.

The second observation concerning the substantial content of the Law is its limited scope. The Law prohibits discrimination on the basis of religion, other convictions, handicap, age and sexual orientation only in respect of employment and occupation conditions. The Law itself

² Greece, Economic and Social Council of Greece, (*Οικονομική και Κοινωνική Επιτροπή*), ‘Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation’, (*Εφαρμογή της Αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας, ή γενετήσιου προσανατολισμού*), 18 July 2006, available at www.oke.gr/opinion/op_157.pdf (last accessed at 24 April 2014).

does not cover discrimination in other fields, such as education, public goods and services etc. What the Law does, however, is foresee the extension of its own scope by means of a PD (Article 27). The adoption of a PD should be easier and more fast-track than the amendment of the Law itself, despite the fact that the initiative for the adoption of the relevant decree is shared between three Ministers: Economy and Finance, Employment and Social Protection and Justice. To date no such decree has been adopted and we are not aware of any motion in this direction. This affirmation still holds true nine years later, in February 2014.

The procedural arrangements of the Law, on the other hand, require some more extensive commentaries. The Law provides (quasi-)separate remedies for discriminations occurring in three distinct situations: a) by the public administration and subordinate or attached bodies, b) by private persons in general, c) by employers in particular. For each one of these categories the Law provides for a 'general' remedy, borrowed from other fields of law, and for a 'specific' body responsible for mediating and monitoring the application of the principles of the Law. The procedural arrangements described below cover any form of discrimination, irrespective of the ground(s) on which it is based.

For discriminations inflicted by the administration and its bodies, the Law (article 13) makes it possible to use the same means of administrative review available under general administrative procedure, in order to obtain the reformation or repeal of unfavourable individual administrative acts (Law 2690/99, Articles 24-26). The plaintiff has to submit his/her plea to the authority that adopted the act or to the hierarchically superior one, without any time limitation. The administrative authority has to respond within 30 days, and if it fails to do so (which is very common in practice) it is deemed to have rejected the plea. The refusal of the authority (express or implicit) may be challenged before the administrative courts and tribunals.

The above system, however, has three important shortfalls. First, it is unclear whether the submission of the administrative review procedure suspends the 60-day time limitation for introducing annulment proceedings before the administrative courts and tribunals. Therefore, many plaintiffs prefer to go directly to the courts against the prejudicial act, or at least to initiate both procedures simultaneously. Second, the submission of the plea for administrative review has no suspensive effects, unless the authority expressly decides so – a possibility which materialises almost under no circumstances. Third, as stated above, administrative review proceedings may only be introduced against *individual* administrative acts – not regulatory ones. This may be specifically relevant for LGBT people: one of the objectives of the EC Directive is to open up the categories of persons who have the right to raise a discrimination plea, even if they are not directly and individually concerned – an objective which may not be served by the general rules on admissibility.

For discriminations inflicted by the administration and its bodies the Law names the Greek Ombudsperson (*Συνήγορος του Πολίτη*) as the equality body. According to the Law, the Ombudsperson has the power to investigate cases of discrimination and, where an actual problem is identified, undertake mediation. Mediation takes the form of informal contacts and of a written 'opinion' which is sent to the failing administration and is also made public. However, there is no way in which the Ombudsperson may oblige the administration to change its decisions or practices, or to offer compensation or other relief to the aggrieved party. The activities of the Ombudsperson are regularly publicised on its website and through its Annual Report to the Parliament. Despite the fact that no such clear obligation stems from the Law, the Ombudsperson has developed the habit of including its special report as an equality body (obligation created by the Law) in its Annual Report.

In its 2005 annual report as an equality body the Ombudsperson had dealt with only one case of discrimination on the basis of sexual orientation. In (Ombudsperson) case 2967/2005 a non-Greek post-graduate student of the University of Athens complained that the expulsion measures taken against him by the University authorities were grounded on his sexual orientation. The

Ombudsperson dismissed the claim and found that the measures were based on the personal conduct of the complainant and that, in any event, this case could not come under the Law, since the alleged discrimination concerned access to education, not to employment or occupation. In its 2006 annual report the Ombudsperson observes that its new functions as an equality body have been better disseminated with the result that the total number of claims under the Law 3304/05 (all types of discrimination) has doubled to 51. However, in 2006, not a single case referred to the Ombudsperson concerned discrimination based on sexual orientation! The same is true for the 2007 and 2008.

The Ombudsperson continued to receive only few reports of discrimination due to sexual orientation between 2010-2013, despite the fact that efforts were made to inform and approach the LGBT community.

Between 2010 and 2013, the Ombudsperson dealt with four cases of discrimination on the basis of sexual orientation. In three of these cases, the Ombudsperson upheld that there was discrimination. Following the Ombudsperson's intervention, it is reported that the discriminatory issues that had arisen were finally solved in all three cases.

In Ombudsperson case 142382/2011 a student at a professional training institute (IEK) lodged a complaint about the derisory, abusive and degrading treatment suffered at the hands of IEK students because of his sexual orientation, and also about the absence of any intervention by the institution's tutors to reverse the status quo that had been created at his expense. The applicant supplied the Ombudsperson Authority with an application that he had submitted to the IEK's administration in late May 2011, requesting the investigation of specific incidents, to which he has received no answer, to date. The Ombudsperson pointed out the directives in prevailing legislation prohibiting discrimination based on sexual orientation, noting in particular that the conduct of those responsible constituted harassment and, therefore a non-permissible form of discrimination, and pointed out the obligation of all public authorities, especially those whose mission entrusts them with an educative role, to contribute actively and effectively to combating stereotypes that feed attitudes which offend human dignity and restrict individual freedom of choice. The Ombudsperson also requested a thorough investigation of the alleged incident and the disclosure of the findings of said investigation.

Apart from the cases where the Ombudsperson intervened during 2010-2013, there was another case that seems to have been resolved without the Ombudsperson's intervention. This was case 149030/2012, concerning an employee in the civil sector who had filed a complaint with the Ombudsperson about the derisory and insulting conduct of his co-workers due to his sexual orientation. In his statement, the complainant noted that he had already been transferred once by personnel management from his previous position to another department due to similar reprehensible conduct by his colleagues. Finally, the complainant notified the Ombudsperson that his situation had greatly improved following interventions by his superiors.

Last but not least, was the case of discrimination because of sexual orientation which received wide publicity and involved the Ombudsperson in his capacity as an advocate of equal treatment principles. The case concerned the censorship of two men kissing in an episode of a foreign TV series that was broadcast by national state-owned television. More specifically, when the first episode of the British BBC TV series "Downton Abbey" was broadcast on 15 October 2012, the scene when two men kiss each other had been censored. Following a relevant complaint (case 158684/2012), the Ombudsperson reiterated the opinion that, in light of developments in social attitudes and mores, endowing a fictional character with homosexual desire and showing him express it with a kiss is neither an inappropriate scene for minors nor can it be construed as offensive to any protected legal good of those who allegedly have been affected. Conversely, censorship constitutes discrimination and contributes to homophobic bias. Finally, and following widespread reaction, the episode was televised again without cutting the scene in

question.

Apart from cases of discrimination due to sexual orientation in the 2010-2013 period, the Greek Ombudsperson received six complaints related to discrimination due to gender identity. In four of these, the Ombudsperson upheld that there was indeed discrimination due to gender identity, and three of these were resolved following his intervention.

Particular attention should be given to one of these cases, which had a misfortunate end: In December 2012, the Greek Transgender Support Association together with the group “Homophobia in Education” publicly denounced how the administration of a particular evening school was acting in a discriminatory fashion towards a transgender student, and filed a complaint with the Greek Ombudsperson. At the beginning of the 2011-12 school year a transgender person tried to enrol at an evening school in Attica in order to complete her school studies, but encountered problems with the school administration because her identity documents listed her male personal details (as she had not had reassignment surgery), which were not congruent with her physical appearance. She then faced several problems not only with her peers, but also with the school’s administration and faculty members.

The Greek Ombudsperson issued a new recommendation (7 March 2013) to the School Headmaster citing the concept of gender identity and its protection by the constitution and international legal system. Furthermore, the Greek Ombudsperson correlated this particular case with the overall scope of human rights protection in his concluding recommendations, urging the School’s Administration and the Teachers’ Association to recognise the student’s human rights on the grounds of gender identity and restore her trust in the school’s administration. He recommended they affirm that: a) she can use the name she desires in her relations with her peers and teachers, b) she dress in accordance with her gender identity, as long as she keeps within the bounds of decency that apply to other female students, and c) she use the women’s lavatories.

However, although the transgender schoolgirl finished evening school and enrolled in an evening lyceum course, the school’s administration did not heed all of the Ombudsperson’s guidelines, but, on the contrary, carried on as before, escalating the same transphobic discriminatory behaviour. The transgender student continued to face discrimination, transphobic harassment and bullying because of her gender identity, and was further victimised by the lyceum’s administration. Finally, in January 2014, no longer able to withstand the extreme discrimination and life-threatening pressure, the student dropped out of school.³

There have been no legal consequences for the school’s administration. Any disciplinary action against the school’s administration for not heeding the Ombudsperson’s recommendations can only be taken by disciplinary bodies within the Ministry of Education. To our knowledge, the Greek Transgendered Support Association is considering taking legal action, but no more information is known yet.⁴

³ Greece, Greek Transgendered Support Association (*Σωματείο Υποστήριξης Διεμφυλικών*), ‘Discriminations by the school administration, persistent threats against the life, physical integrity and dignity, plus the disappointment because of a change in stewardship by the Greek Ombudsman, forced the trans schoolgirl to leave the school environment’ (*‘Η ρατσιστική συμπεριφορά της διεύθυνσης του σχολείου, ο διαρκής κίνδυνος για τη ζωή, τη σωματική ακεραιότητα και την αξιοπρέπεια της και η απογοήτευση από την αλλαγή διαχείρισης του Συνηγόρου του Πολίτη, εξανάγκασαν τρανς μαθήτρια να εγκαταλείψει το σχολικό περιβάλλον’*), Press Release, 18 January 2014, available at: www.transgender-association.gr/ (last accessed at 18 January 2014).

⁴ Greece, Greek Transgendered Support Association (*Σωματείο Υποστήριξης Διεμφυλικών*), ‘Campaign for the Legal Recognition of Gender Identity: Access Everywhere, recognition opens doors’, (*‘Καμπάνια για τη Νομική Αναγνώριση της Ταυτότητας Φύλου: Πρόσβαση Παντού, Η αναγνώριση ανοίγει πόρτες’*), Press Release, 18 January 2014, available at: www.transgender-association.gr/ (last accessed at 18 January 2014).

Discrimination in the workplace is dealt with in employment legislation and is liable to administrative fines ranging from €1,000 to €30,000. The role of ‘equality body’ is entrusted to the Employment Inspection Body (*Σώμα Επιθεώρησης Εργασίας*). This (like the Ombudsperson) is a pre-existing body, enjoying extensive inspection powers. Its task is to make sure that the main rules of employment legislation are actually applied. Through ‘dawn raids’, document inspections, investigations, cross-examinations etc, the Employment Inspection Body makes sure that all employment is duly declared, paid leaves are respected, overtime work is remunerated etc.

By virtue of the Law, this Body is also empowered to check for the existence/occurrence of discriminations in the workplace. As an ‘equality body’ the Body may a) participate in any conciliation effort between the parties, b) issue a summary report on the reasons that such a conciliatory effort failed, c) give its opinion, on its own initiative or after recommendation by the Minister of Justice, on the interpretation of the Law, d) draw reports on the application and promotion of equal treatment. Unfortunately, this body has no website where it could publicise its actions and its findings and has never published a report under its capacity as an equality body.

However, the Employment Inspection Body responded to the requests for information by the ECOSOC, both in 2005 and in 2006, and has stated that no cases of discrimination under Law 3304/05 have ever been reported to it. The same information was provided in a written reply to our request for information, in the beginning of 2008 – thus covering thus the year 2007. This finding is somehow contradicted by the information given to the ECOSOC for its 2006 annual report by the Department of Equal Opportunities of the Ministry of Employment and Social Protection.⁵ This Department, entrusted by the Law with the obligation to offer operational support to the Employment Inspection Body for the application of Law 3304/05, has responded that six cases of discrimination had been reported to it. However, the Department did not specify the grounds of the alleged discriminations, nor did it state how it actually dealt with each one of these cases.

According to the data supplied by the Employment Inspection Body for 2010-2013, no cases of discrimination based on sexual orientation were reported!

For all other cases of discrimination (i.e. when the source of discrimination is not a public authority or an employer), the Law establishes a new ‘equality body’, the ‘Equal Treatment Committee’ (*Επιτροπή Ίσης Μεταχείρισης*). This is a body created within the Ministry of Justice, its members are nominated by the Minister, it is presided by the Secretary General for Justice, and its operations are manned and its logistics supported by services of the same ministry. The fact that the Equal Treatment Committee has limited independence has been highlighted, but this may not be dramatic in itself to the extent that the Committee only regulates disputes arising between individuals – no administration is involved.

The Equal Treatment Committee has the same powers (investigative etc) and functions (mediation, reporting etc) as the Employment Inspection Body (above para. 0). It would seem, however, that the Equal Treatment Committee has been pretty much idle since its setup, one of the reasons being that it is understaffed. It is telling that the Committee has no webpage (not even as part of the webpage of the Ministry of Justice) and has not yet published any yearly report. More importantly still, it has even failed to respond to the request for information addressed to it by the ECOSOC for every single year since 2005.

⁵ Greece, Economic and Social Council of Greece, (*Οικονομική και Κοινωνική Επιτροπή*), ‘Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation’, (*Έφαρμογή της Αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας, ή γενετήσιου προσανατολισμού*), 18 July 2006, available at www.oke.gr/opinion/op_157.pdf (last accessed at 24 April 2014)

This notwithstanding, the Equal Treatment Committee did respond to our request for information (in January 2008) and stated that no case of discrimination on the basis of sexual orientation has ever been reported to it. In its 2006 annual report, the Ombudsperson states that the members of this Committee have occasionally met merely for coordination purposes, but this may just be an attempt to mask the Committee's idleness.

Nothing has changed in the last three years: the Equal Treatment Committee still has no dedicated website, nor does it have any presence within the parent Ministry's website – despite the fact that the latter (Ministry) has been renamed the “Ministry of Justice, Transparency and Human Rights”. Similarly, the Committee has failed to provide any data to the ECOSOC for the years 2007 Ombudsperson and 2008 (see *To Vima* Newspaper, 4-11-09). In its 2008 Yearly Report on Equal Treatment, the ECOSOC goes as far as to hold that the Equal Treatment Committee ‘only exists on paper, in violation of both national and EU law’.⁶

Nothing has changed with regard to the Equal Treatment Committee in the last three years (2010-2013). There is no source available for information⁷, since this committee exists only in theory.

Nothing has changed with regard to the Equal Treatment Committee in the last three years (2010-2013). The Equal Treatment Committee has not published any decision or annual report since its establishment while no information is available at the website of the Ministry of Justice⁸. Sources from the Ministry of Justice and the other Equality bodies confirm that, the committee is in practice inactive.

Last but not least, the Law institutes penal sanctions for those who discriminate in the course of their commerce and/or the delivery of goods or services: six months to three years imprisonment and €1,000 to €5,000 fines. It is not clear whether this possibility also covers public goods or services. In any event, if the author of the discrimination is a public administration, only its employees (civil servants) are liable to be prosecuted, but actions of that kind are only exceptionally successful. A further uncertainty – and an important one – is whether proceedings may only be initiated by the victim of discrimination or, on the contrary, by the magistrature itself. The Law repeals and replaces the equivalent provision of Law 927/1979 (for this law see below under F) which, (since a modification introduced in 2001) opened up the way for the magistrature to pursue perpetrators of discriminations on its own motion. The Law as it now stands, however, is silent on this issue.

In court hearings, whether criminal or administrative, none of the three ‘equality bodies’ may constitute parties, for lack of legal personality and of the necessary empowering provisions in their constitutional acts. The best way in which they can assist the plaintiffs in judicial proceedings is by issuing their reports on each individual case in time for them to be taken into account by the competent court or tribunal. Most magistrates would pay the utmost attention to the findings of any of the ‘equality bodies’ and would act in accordance. A further way in which

⁶ Greece, Economic and Social Council of Greece, (*Οικονομική και Κοινωνική Επιτροπή*), ‘Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation’, (*Έφαρμογή της Αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας, ή γενετήσιου προσανατολισμού*), 24 June 2008, available at www.oke.gr/opinion/op_196.pdf (last accessed at 24 April 2014).

⁷ Greece, Ministry of Justice, Transparency and Human Rights, (*Υπουργείο Δικαιοσύνης, Διαφάνειας και Ανθρωπίνων Δικαιωμάτων*). Among others, the Equal Treatment Committee has not issued any decision or any annual report. Moreover, there is no information about this Committee on the Internet site of the Ministry of Justice (www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97.aspx).

⁸ Greece, Ministry of Justice, Transparency and Human Rights, (*Υπουργείο Δικαιοσύνης, Διαφάνειας και Ανθρωπίνων Δικαιωμάτων*). Among others, the Equal Treatment Committee has not issued any decision or any annual report. Moreover, there is no information about this Committee on the Internet site of the Ministry of Justice (www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97.aspx).

the ‘equality bodies’ could be of help would be by allowing any of their personnel who have dealt with any particular case, to testify before the court or tribunal hearing the same case – this, however, does not seem to be the current practice.

Article 9(2) of the Directive is transposed through Article 13(3) of the Law. The scope of the latter, however, is more restrictive than the former, in several ways. First, contrary to the Directive which opens up the right of action to ‘associations, organisations or moral persons’, the Law only speaks of ‘legal persons’. Despite the fact that associations under the Civil Code do have legal personality and that the same is true for most organisations, legal personality is always conditional upon the fulfilment of specific formalities. Any civil society organisation may act on behalf and/or in support of complainants according to Law 3304/2005, as long as the statute of the organisation states clearly that such support is included in the scope of the organisation. Statutes of organisations are not public documents, therefore it is impossible to know which civil society organisations fulfil this criterion. No organisation has ever acted before Courts on behalf or in support of a complainant, because there has never been any complaint filed for reasons of LGBT rights breaches. Moreover, there are no data about how many civil society organizations engaged on behalf or in support of a complaint before the Greek Ombudsperson⁹.

It would seem that the more general formulation of the Directive was intended to open up the right of action to any interested party, rather than to impose formal requirements. Second, the Law makes admissibility of legal persons conditional upon the fact that their constitutive acts specifically provide for such procedural interventions to be carried out by them – a more general *locus standi* based on their general aim being insufficient. Third, while the Directive allows such third parties to act ‘on the behalf *or* in support’ of the victim, the Law opens up only the former possibility. Fourth, the Law states that such representation is only possible provided the victims have given their express consent through a notary act (power of attorney) or an authorisation signed before a public authority. This is not a direct limitation of the scope of protection as stated in the Directive, but in practice it may prove an important ‘filtering device’, especially for LGBTs who may shy away from such formalities.

In Greece there are several bodies representative of LGBT people, most of them run on a ‘personal basis’ by one or several activist members, with very limited resources and often limited territorial scope. There are few bodies with wider representation and legal personality. These are:

- a) Homosexual and Lesbian Community of Greece (*Ομοφυλοφιλική και Λεσβιακή Κοινότητα Ελλάδας*, ΟΛΚΕ), an association created in 2004 (www.olke.org),
- b) Sympraxis (*Σύμπραξη κατά της Ομοφυλοφοβίας*), an association created in 1995 and based in Thessaloniki (www.geocities.com/symp Praxis/) and
- c) TranssexualGreek Transgendered Support Association (*Σωματείο Υποστήριξης Διεμφυλικών*) www.transgender-association.gr/
- d) Colour Youth (*Κοινότητα LGBTQ Αθήνας*), www.colouryouth.gr/
- e) Good As You(th) (*Κοινότητα LGBTIQ Θεσσαλονίκης*) <http://goodasyouth.com/>
- f) Athens Pride (*Φεστιβάλ Υπερηφάνειας Αθήνας*) www.athenspride.eu
- g) Thessaloniki Pride (*Φεστιβάλ Υπερηφάνειας Θεσσαλονίκης*), www.thessalonikipride.gr
- h) Rainbow Families (*Οικογένειες Ουράνιο Τόξο*) <http://ouraniotoksofamilies.blogspot.gr/>
- i) *Σύνθεση Ενημέρωση για το HIV-AIDS*, www.10percent.gr
- j) Positive Voice (*Θετική Φωνή*) www.positivevoice.gr.

To date, however, most representative organisations have used petitions on line, letters to members of the Greek and/or European Parliament, letters to Ministers, press releases, lobbying

⁹ In order to identify data research has been carried out on February 2014 in the following websites: Greek Ombudsperson (<http://www.synigoros.gr/>) and NOMOS database (<http://lawdb.intrasoftnet.com>).

MPs and other ‘political’ means of intervention, rather than use their procedural rights under the Law.

Other organisations with a legal personality and an expressed purpose to monitor and combat discrimination – though not specifically related to sexual orientation – are, the Greek Helsinki Monitor (www.greekhelsinki.gr/), Amnesty International Greece (www.amnesty.org.gr/), Antigone Information and documentation centre on racism, ecology, peace and non violence (<http://antigone.gr>) and the Hellenic League of Human Rights (www.hlhr.gr).

Law 3304/05 which simultaneously transposes into Greek law both Directives 2000/78/EC and 2000/43/EC has never been applied by any Greek court or tribunal. More precisely, to the end of 2007, no judgment or decision applying any of the law’s provisions had been published.¹⁰ This may be due to the fact that the law only came into force a couple of years ago and that legal proceedings before most jurisdictions would take longer before a final judgment is published – while it is difficult to grant interim measures on the basis of the Law. A further reason is that – contrary to Law 3304/05 – most laws in Greece contain various provisions unrelated to one another, and few people apart from directly interested parties regularly follow legislative production. Therefore, the lack of awareness of the possibilities opened up by the Law may constitute an important drawback to its application.

Since the previous report few cases have indeed been decided by the Greek Courts on the basis of Law 3304/05, but only in relation to discriminations based on ethnic origin and age. Up until February 2014, no case concerning discrimination on the basis of sexual orientation had been decided. In one case the owner of a Café-Restaurant was condemned for excluding from its premises two men wishing to be served, but judgment in this case was based only on the Civil Code provisions protecting personality (Articles 57-59) and not on Law 3304/05.¹¹ Yet another means of protecting LGBTs from discriminatory treatment has been devised by the Data Protection Authority. In its decision n. 3/2008 (www.dpa.gr) the Authority fined a private insurance company for using the military records of a person who had refused service for reason of homosexuality, in order to deny insurance coverage. The authority found that the mere fact that the person had declared he was homosexual did not classify him as high risk for insurance purposes and, therefore, held that the company lacked the right to process the relevant data.

On a more positive note, Directive 2002/73/EC ‘amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women for access to employment, vocational training and promotion, and working conditions’ has been transposed into Greek law by Law 3488/2006 (FEK A 191, 11/09/06). This Law contains many concepts and uses many of the procedural arrangements common to Law 3304/05. The more recent law, however, is better drafted than Law 3304/05, not least because a) it uses the term ‘sexual’ orientation as in ‘having sex’ rather than in ‘procreating’, b) it allows for greater intervention of organisations and unions in the various procedures and c) it names a single equality body, both for publicly and privately inflicted discriminations: the Ombudsperson. It is to be hoped that in the forthcoming future and following the Ombudsperson’s suggestion to that effect¹² – the two protection systems will merge on the line of the one instituted by the most recent law. Such hope, however, remains as yet unaccomplished. No such merge has taken place so far (February 2014).

To summarise, since the previous report no case concerning discrimination on the basis of sexual discrimination has been decided by the Greek Courts. Only the Ombudsperson dealt with cases

¹⁰ Greece, NOMOS database, available at: <http://lawdb.intrasoftnet.com> .Research carried out in February 2014.

¹¹ Greece, Case CFI Thessaloniki, 23238/2006, ‘Armenopoulos’ (*‘Αρμενόπουλος’*), (2006), p. 1402 .,

¹² Greece, Ombudsperson (*Συνήγορος του Πολίτη*), Annual report 2006, p. 250, available at: www.synigoros.gr/resources/docs/2_annual_06_plires.pdf (last accessed at 21 April 2014).

of discrimination based on sexual orientation and on gender identity. In most of the cases, the Ombudsperson pointed out the discrimination that face homosexual and transgender people.

B. Freedom of movement

Under Greek law, ‘free’ partnerships between unmarried people are not recognised for any purpose. This is true for couples of different sex and, a fortiori, for couples of the same sex. The legislator has failed to respond to evolving social realities, possibly because of the important role the Orthodox Church has been playing in Greek politics, especially during the last decade.

More alarmingly still, as recently as 2005 and 2006, the Highest Civil Jurisdiction, the Hareios Pagos (*Άρειος Πάγος*) has held that, after many years of common life and after bringing up their common children together, the unmarried opposite-sex partner of a deceased man could claim no damages whatsoever for the death of her partner (cases 343/05 and 1735/06). In the same vein the same Court avoided, contrary to public morals, the testament of a homosexual man who left a considerable part of his fortune to his lovers (who also happened to be Albanians) rather than to his family (case 981/2006).

Accordingly, PD 106/2007 (OG A’ 135/21.6.07) which transposes into Greek law Directive 2004/38/EC, uses an extremely restrictive definition of family members and only refers to spouses. In the light of the jurisprudence referred to in the previous paragraph, there is no way in which this extremely restrictive definition of family contained in a legal act as recent as the PD 106/2007, may be interpreted to cover same sex partners in the foreseeable future.

It is also worth noting that a draft law put forward by the right-wing New Democracy (*Νέα Δημοκρατία*) government (2008) for the recognition of registered partnerships (cohabitation agreement) specifically excludes from its scope same sex couples. Despite strong reactions from several NGOs, legal organisations and the left-of-the-centre political parties, and despite a government change from conservative to socialist, this draft has now become Law 3719/2008 and still excludes from its scope same sex unions. Asked on the compatibility of that law with the obligations arising under EU law, and more specifically under Directive 2004/38/EC, the Greek Ombudsperson reasoned that no violation could be identified as long as it is up to every member state individually to determine “family members” and award them the rights stemming from the Directive in a non-discriminatory way (Ombudsperson case 20914/2008).¹³

Four same-sex couples lodged an application with the European Court of Human Rights. They complained that, by excluding them from the scope of the law 3719/2008 on civil unions, the Greek State had introduced a distinction which unlawfully discriminated against them. In its judgment in the joint cases of *Vallianatos and others v. Greece* delivered on 7. November 2013, the Grand Chamber of the European Court of Human Rights ruled that Greece had violated article 14 (prohibition of discrimination) taken together with article 8 (right to respect for private and family life) of the European Convention on Human Rights.

In its decision, the Court ruled that Greece had failed to provide a convincing justification for excluding same-sex couples. The government’s argument, according to which the law’s main purpose was to protect children of unmarried parents, did not constitute a valid reason, because the law’s real objective was the legal recognition of a new form of family life. Therefore, exclusion of same-sex couples breaches the Convention. In addition, the Court observed that under Greek law different-sex couples, unlike same-sex couples, could have their relationship legally recognised even before the enactment of Law no. 3719/2008, whether fully on the basis of the institution of marriage or in a more limited form under the provisions of the Civil Code dealing with de facto partnerships.

¹³ Greece, Greek Ombudsperson (*Συνήγορος του Πολίτη*) Response of the Ombudsperson, available at: www.synigoros.gr/resources/7379_2_symfono_sumviosis_71--2.pdf, 7 January 2008, (last accessed at 24 April 2014)

Consequently, same-sex couples had every interest in entering into a civil union since it would give them the sole basis in Greek law on which to have their relationship legally recognised. Finally, the Court remarked that there was no consensus among Council of Europe member States but that a trend was currently emerging towards introducing forms of legal recognition of same-sex relationships. Of the 19 States which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. It followed that, with two exceptions, Council of Europe member States, when they opted to enact legislation introducing a new system of registered partnership as an alternative to marriage, included same-sex couples in its scope. Therefore, the European Court of Human Rights held (by 16 votes to 1) that there had been a violation of Article 14 taken together with Article 8.

No national case law exists on same sex couples. However, the decision of the European Court of Human Rights is of great importance, since for the first time same sex couples are explicitly considered as family members, and is expected to trigger changes in the Greek legal system. In specific, it is expected that the decision will lead to the amendment of law 3719/2008 on civil unions, in order to include same sex couples in its scope. Therefore, although no case law exists, a positive trend can be reported due to the decision of the ECHR.

Unfortunately to this date, despite its conviction by the European Court of Human Rights, Greece has still not modified law 3719/2008, so that it incorporates same-sex couples. A law proposal that allows same-sex couples to either enter a cohabitation agreement or get married has been tabled by the main opposition party Coalition of the Radical Left – SYRIZA (*Συνασπισμός Ριζοσπαστικής Αριστεράς - ΣΥΡΙΖΑ*).¹⁴

Moreover, and as means of putting pressure on the legislature, two homosexual couples managed to have their civil marriages celebrated by the Mayor of Tilos, a small island in the Dodecanese. Following an action in nullity introduced by the Public Prosecutor, the two acts were set aside (Rhodes Court of First Instance Cases 114/2009 and 115/2009 (Chronika Idiotikou Dikaiou (2009) 617). The two couples appealed the first-instance decision before the Court of Appeal of the Dodecanese, which upheld the first-instance decisions that had annulled the two marriages. The couples have now appealed to the Highest Civil Jurisdiction, the Hareios Pagos (*Άρειος Πάγος*). The Prosecutor's action against the Mayor has, nonetheless, been dismissed.

Therefore, EU citizens may gain the right to stay in Greece on their own right, as direct beneficiaries of Directive 2004/38/EC, but not as family members of other EU citizens of the same sex already residing in Greece. No relevant statistics are available.

LGBTs who are not EU citizens, have no right to enter and stay in Greece as family members neither of Greek nor of other EU citizens. The same is true for their children. Again, no statistics are available.

The lack of statistics may be alleviated by the fact that from direct contacts we undertook with the Department of the Interior Ministry responsible for legislative coordination in the field of immigration, we learnt two things. First, that a 33-page long Circular (n. 4174/28-2-08) has been issued explaining how family rights of EU citizens should be implemented and nowhere in this lengthy document is there a mention of the eventuality of same-sex spouses, registered partners or, couples. Second, that until now no such cases have arisen.

¹⁴ Greece, Greek Parliament (*Βουλή των Ελλήνων*), 'Law Proposal on Cohabitation Agreement' (*Πρόταση νόμου για το Σύμφωνο Συμβίωσης*), 25 November 2013, available at: www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=64819431-b5c2-4f5e-b197-1344bede7819 (last accessed at 25 April 2014).

C. Asylum and Subsidiary protection

Greece clearly lags behind most other Member States in the way it implements the asylum directives. From the various EC directives in this field of law, only Directive 2001/55/EC on the massive influx of asylum seekers has been transposed timely. The only other EC text to be implemented is the ‘procedures’ Directive 2003/9/EC, which was transposed as late as the end of 2007 (by PD 220/07, OG A’ 251/13.11.07) only after the condemnation of Greece by the ECJ in case C-72/06, *Commission v. Greece*, of 19 April 2007.

On the contrary, implementation of the ‘qualification’ Directive 2004/83/EC is still pending. This Directive has eventually been transposed into Greek law by P.D. 96/2008 (OG A’ 152/30.7.08), almost simultaneously with the ‘procedures’ Directive 2005/85, which was transposed by P.D. 90/2008 (OG A’ 138/11.7.08). The former text (P.D. 96/2008) lists sexual orientation among the ‘reasons for persecution’ giving the right to protection – in so doing it does no more than copy the relevant Directive provision (Article 10). P.D. 90/2008, while remaining mute on this issue.

Moreover, Greece is fully bound by the 1951 Geneva Convention and the 1967 New York protocol on the protection of refugees – and, of course, by the 1950 European Convention of Human Rights. Protection is being offered to people reasonably fearing persecution ‘for reasons of membership of a particular social group’. LGBTs who are being persecuted in their home countries do, in principle, come within this definition.

Greece, however, has a surprisingly low percentage of recognition of refugee status, under the Convention or else. According to the statistics posted on the official website of the Greek UNHCR,¹⁵ the overall (Convention and complementary protection) recognition rate was of 20.15 per cent in 2000, 22.48 per cent in 2001, but then dropped to 1.07 per cent in 2002, 0.62 per cent in 2003, 0.88 per cent in 2004, 1.90 per cent in 2005 and 1.53 in 2006. In absolute numbers, this means that in 2005 (the last year for which statistical data is fully available) out of 9,050 applications, only 88 individuals got some protection status (39 under the Convention and 49 complementary protection). Against this bad news, there is some encouraging development: of all the remaining applicants, few are actually being sent back to their own or to third countries, but most remain on the ground (and hope for the next regularisation campaign). From 2010, there are no available statistics of the UNHCR¹⁶.

Since 2010 several changes have been made to the asylum granting procedure. To begin with, PD 114/2010 established a uniform procedure governing the recognition of refugee status to both foreigners and stateless individuals; in addition, law 3907/2011 was passed, setting up the Special Asylum and First Reception Services. The Asylum Service is the first separate structure in Greece dealing with the examination of asylum applications. It falls under the remit of the Minister of Citizen Protection and its mission is to examine and decide on asylum applications that are filed in the country based on Greece’s national laws and international obligations. The Asylum Service also contributes to shaping national policies on international protection and fostering collaboration with international organisations and the European Union in the areas of its remit. Lastly, PD 113/2013 modified procedures governing the recognition of refugee or subsidiary protection status to foreigners and stateless individuals (in accordance with directive 2005/85/EC), whilst PD 141/2013 incorporated directive 2011/95/EU in Greek national

¹⁵ Greece, UNHCR, ‘Statistical information’, (*‘Ιστορία των προσφύγων στα στατιστικά’*), available at: www.unhcr.gr/genikes-plirofories/statistika.html. (last accessed at 25 April 2014)

¹⁶ Greece, UNHCR, ‘Statistical information’ (*‘Ιστορία των προσφύγων στα στατιστικά’*), available at: www.unhcr.gr/genikes-plirofories/statistika.html. (last accessed at 25 April 2014) UNHCR provides statistics for the 1997-2010 period only).

legislation.¹⁷ Separating the Asylum Service from Police Authorities and staffing it with specialised personnel has brought about impressive results. During the first 6 months of its operation (7.6.2013 to 29.11.2013) the newly-founded Asylum Service recorded 4,189 international protection applications and issued 1,670 decisions at first instance, thereby according international protection status to 213 applicants. By the end of November the percentage of positive decisions at first instance ran at 12.8%.¹⁸ Even though the PD 141/2013 incorporates directive 2011/95/EU and the notion of sexual orientation and gender identity as legal grounds for granting asylum, there is very few data on any such cases reported yet. It should be stressed that it is only since the new asylum procedure was set up in 2013 that the system functions to an adequately satisfying degree. CJEU judgments of cases C-199/12, C-200/12 and C-201/12 and implementation of the Directive 2011/95/EU have not affected insofar the situation of LGBT regarding asylum.

The truth of the matter, however, that as far as ‘protection’ is concerned, Greece is not a hospitable country for any kind of claim. It is clear that out of the very few successful claims, extremely few, if any, would be based on persecutions based on sexual orientation until the new PD 141/2013 came into force. No official statistics exist on the grounds on which a) protection claims are submitted or b) refugee status is granted¹⁹. Even if such statistics did exist, sexual orientation would not be a category of its own, but would come as a sub-category of ‘persons persecuted for reasons of membership of a particular social group’ – until 2013, since sexual orientation or gender identity were not recognised categories until then. Moreover, research into the relevant case law of the Greek Supreme Administrative Jurisdiction (*Συμβούλιο της Επικρατείας* – which controls the legality of expulsion orders of asylum seekers) gives no hits on cases concerning LGBTs.

All official statistics distinguish on the basis of nationality of the claimants/refugees. The main nationality group seeking asylum in Greece are Iraqis: they represented 87.02 percent of total asylum claims in 1997, 73.35 per cent in 1998, 59.29 per cent in 1999, 43.27 per cent in 2000, 35.86 percent in 2001, 45.32 per cent in 2002, 35.20 per cent in 2003, 19.33 per cent in 2004, 10.73 per cent in 2005 and 18.39 per cent in 2006. Other nationalities follow (in descending order, based on 2006 data): Bangladesh, Afghanistan, Pakistan, Georgia, Iran, Nigeria, Sudan, Turkey, Somalia, Myanmar.

Regarding 2013 statistics, as recorded by the new Asylum Committee, we may observe the following: 24.9% of positive decisions at first instance related to claimants from Syria, 18.3% from Afghanistan, 9.4% from Eritrea, 8.0% from Sudan, 6.1% from Iran, and 5.6% from Ethiopia. Among these countries, Iran, Iraq (especially after the latest US invasion)²⁰ and (to a lesser extent) Afghanistan, are countries openly hostile to LGBTs. On the basis of this data it may be reasonable to infer that several of the asylum seekers and of the refugees are in Greece because they are LGBTs. According to unofficial information, gathered for the purposes of the present report, there are at least two occasions on which refugee status was given to Iranian people fearing prosecution because of their sexual orientation.

¹⁷ Greece, Ministry of Citizen Protection (*Υπουργείο Προστασίας του Πολίτη*), ‘Asylum and Immigration’ (‘Υπηρεσία Ασύλου’), available at: www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3779&Itemid=465&lang&lang (last accessed at 25 April 2014).

¹⁸ Greece, Ministry of Citizen Protection (*Υπουργείο Προστασίας του Πολίτη*), ‘Asylum and Immigration’ (‘Υπηρεσία Ασύλου’), available at: www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3779&Itemid=465&lang&lang (last accessed at 25 April 2014).

¹⁹ Greece, UNHCR (*Υπατη Αρχοστέια του ΟΗΕ για τους πρόσφυγες*), ‘Statistical information’, (*Ιστορία των προσφύγων στα στατιστικά*) available at: www.unhcr.gr/genikes-plirofories/statistika.html.

²⁰ Greece, UNHCR, ‘Statistical information’, (*Ιστορία των προσφύγων στα στατιστικά*), available at: www.unhcr.gr/genikes-plirofories/statistika.html (last accessed at 25 April 2014)

It is worth pointing out the case of an Iranian LGBT asylum seeker, known as Alex. It is not clear whether he invoked sexual orientation (and at which stage) or only political opinion as grounds for his (already suffered) prosecution, but the fact is that at some point a Greek man testified to be his partner. Despite this, the applicant's claim was rejected at all administrative instances. He was finally granted refugee status in late March 2008, based on the 1951 Geneva Convention.²¹

While dealing with this case, the Greek Ombudsperson issued a document classified as 'confidential' (because of the sensitive personal data contained), dated 13 February 2008 and addressed it to the Police Commander. In this document the Ombudsperson made plain that in its view prosecution for sexual orientation reasons does justify the recognition of refugee status. This case was brought up by the Greek Homosexual Community, which addressed letters to members of the Greek and European Parliament, to the Ombudsperson, to the Deputy Minister for Public Order and circulated a press release on the Internet.²² However, no further action has been taken, as the Iranian in question was granted asylum by the authorities.

A more recent case that received public attention in 2013 was that of an Iranian refugee who applied for asylum on the ground of his sexual orientation due to persecution in his native country. Despite the fact that he lives permanently in Greece with a same-sex partner, his asylum application was initially turned down, but on October 15, 2013, he was granted asylum on the grounds of 'belonging to a particular social group'.²³

To sum up, despite the recent changes of the Greek legislation (especially the PD 114/2010 establishing a uniform procedure governing the recognition of refugee and the PD 141/2013 incorporating Directive 2011/95/EU), Greece is not hospitable to asylum seekers. Moreover, recognising refugee status to the LGBT partner of a person already having the status of refugee is not an issue in Greece.

²¹ Greece, *Ta Nea* 'They wanted to hang me because I am a homosexual' ('Θα με κρεμούσαν γιατί είμαι ομοφυλόφιλος'), 1 April 2008, available at : www.tanea.gr/news/greece/article/62873/?iid=2 (last accessed at 25 April 2014), Greece, Nooz.gr, 'Finally granted asylum to Iranian homosexual refugee' ('Χορηγήθηκε τελικά άσυλο στον Ιρανό ομοφυλόφιλο πρόσφυγα'), 28 March 2008, available at: www.nooz.gr/page.ashx?pid=9&aid=36578&cid=1 (last accessed at 25 April 2014).

²² Greece, 10%, 'When Greece condemns people to death', ('Όταν η Ελλάδα καταδικάζει ανθρώπους σε θάνατο') 25 November 2007, available at: www.10percent.gr/old/issues/200710/02b.html (last accessed at 25 April 2014).

²³ Greece, *Efimerida ton syntakton*, (*Εφημερίδα των Συντακτών*), 'Asylum was given to the gay Iranian B.' ('Δόθηκε άσυλο στον Ιρανό ομοφυλόφιλο Μπ. '), 30 October 2013, available at: www.efsyn.gr/?p=140635 (last accessed at 25 April 2014).

D. Family reunification

The 'Family Reunification' Directive 2003/86/EC has been transposed into Greek law by PD 131/2006 (FEK A 143, 13/07/06). As in all other instances where giving rights to non-married partners is at stake, the legislator's response is outright negative. Article 4 of the PD, entitled 'Family members' restricts the right of family reunification to the adult spouse of the sponsor. No mention whatsoever is made of non-married partners, regardless of whether they are the same or opposite sex from the sponsor. The only provision which deviates from the traditional definition of the nuclear family is paragraph 3 of the same Article, which restricts the reunification rights of polygamous men.

Under these circumstances it comes as no surprise that no LGBT partners or spouses of third country nationals residing in Greece are admitted for family reunification – and that no statistics are available. Similarly, no judgment by the courts or tribunals may be identified. As above (under section A), the fact that the PD is very recent and that the Greek justice system is not very expedient – but for interim measures which, are extremely difficult to envisage under this PD – may be part of the explanation.

More importantly, however, even though the Family Reunification Directive allows Member States to recognise as family members unmarried partners, it may not impose such an obligation on States whose legal systems do not recognise legal effects to unmarried couples. Therefore, unmarried partners of sponsors established in Greece would have no case under either Greek or EC law. Similarly, same-sex married couples would not be recognised in Greece, under Article 45 EC, as countering public order.

Even though the Directive has been transposed from 2006, there is no data on any such cases reported yet²⁴. Moreover no statistics are available.²⁵ Until today there has been no interpretation of the concept of family members concerning LGBT persons in case law, circulars or other guidance²⁶.

²⁴ Greece, NOMOS database available at: <http://lawdb.intrasoftnet.com>. Research carried out in February 2014.

²⁵ Greece, Ministry of External Affairs (*Υπουργείο Εξωτερικών*), Response to our request for data, P.N. 2852/29.1.14.

²⁶ Research conducted in Nomos legal database (June 2014) identified no relevant legislation, circulars or guidance on the matter. Greece, NOMOS database available at: <http://lawdb.intrasoftnet.com>.

E. Freedom of assembly

Freedom of assembly is guaranteed by Article 11 of the Greek Constitution. It is provided that ‘all the Greek citizens have the right to assemble peaceably and unarmed’. Paragraph two of the same provision provides for restrictions, as follows: ‘the police may be present only at outdoor public assemblies. Outdoor assemblies may be prohibited by a reasoned police authority decision, in general if a serious threat to public security is imminent, and in a specific area, if a serious disturbance of social and economic life is threatened, as specified by law’ (‘official’ translation generally available on the internet, see e.g. www.hri.org/docs/syntagma/).

Despite the fact that this constitutional provision has not been subject to any revision since the Constitution was first put into force, in 1975, the executing law provided for in the last phrase of Article 11 has not been enacted as yet. Therefore, two legislative acts enacted under the previous colonel regime still regulate this area: legislative decree 794/1971 which regulates public assemblies (*Περί δημοσίων συναθροίσεων*, Government Gazette, FEK A 1, 01/01/1971) and the royal decree 269/1972 which regulates the conditions under which a public assembly can be dispersed (*Περί εγκρίσεως του κανονισμού διαλύσεως δημοσίων συναθροίσεων*, Government Gazette, FEK A 59, 29/04/1972). The former text recognises the ‘...option for the police to be constantly present’ (Article 4) and regulates the reasons for which a public assembly can be dispersed (Article 7): this may happen in cases of violence, especially when there is a direct threat to life or to the physical integrity of the participants or a threat to public security and public order, as well as in cases where the participants are breaking the Law.

The fact that legislative acts which have been adopted by a non-democratic government may not be compatible with the values of a democratic Constitution has been underlined by several authors. Most importantly the Public Prosecutor of the Supreme Court (*Hareios Pagos*) in his consultative Opinion No 4/1999 has held several provisions of the said acts to be anti-constitutional. The main ground of anti-constitutionality would be that that, contrary to the Constitution which foresees only public security as a ground for restricting the right of assembly, the legislative acts also add a second ground, that of public order.

Public order is a much broader concept, in that it includes the respect of ‘...continued and undisturbed operation of public services, public transport etc’ (Supreme Administrative Court – *Συμβούλιο Επικρατείας* – decision 957/78). The Opinion also deems the legislative acts to be contrary to the European Convention on Human Rights.

The tentative legal vacuum may explain the fact that the police is reluctant to prohibit or restrict public assemblies, except for in extreme situations. On the flip side, the legislative acts that the police is supposed to apply are outdated and over-restrictive, thus allowing for the exercise of important discretion. The fact that the Supreme Administrative Court (*Συμβούλιο Επικρατείας*) has not as yet had the opportunity to judge their constitutionality may be explained by the fact that a) the police has made a sensibly reasonable use of the powers conferred to it and b) judicial review is not an appropriate means of redress against public assembly restrictions.

Before 2005, several ‘Pride Assemblies’ had been sporadically held in public parks and squares of Athens. For the organisation of events in parks, squares etc permission has to be given by the municipal authorities. In order to occupy public streets, permission by the police is required. All necessary permissions have always been obtained without any major hurdle or delay. During the parades and as required by the law, the police provided security forces: more numerous the first year, less strong the following ones.

Annually held ‘Pride Parades’ have been held continuously in downtown Athens from 2005 onwards.. The recent Pride Parades attract an increasing number of attendees: an estimated 5,000

people attended the 2009 Pride Parade, compared to an estimate of 2,000 in 2007. The police have readily offered their protection to the events, but has never had to intervene in incidents openly driven by homophobia. Athens Pride has a dedicated website with a wealth of relevant information (www.athenspride.eu/v2/).

In 2013 it is estimated that about 15,000 people participated in Athens Pride²⁷ (), whilst in 2014 it is expected to celebrate its 10 year anniversary. At the same time, Thessaloniki, the second largest city in Greece, saw its first two pride parades in 2012 and 2013. From 2010 to date, 16 demonstrations in support of LGBT rights and same-sex couples have been held in total.

Extremely few homophobic demonstrations or other collective manifestations have taken place in Greece (for individual statements by clergymen, statesmen etc see below, section H). The first organised manifestation of homophobia was the distribution of flyers against the 'Pride Parades' in 2005 and 2007. This was organised by the (ultra) extreme right nationalist party 'Golden Dawn' (*Χρυσή Αυγή*). Few menaces or other open calls for animosity have been launched against LGBT organisations or their representatives, chiefly by high-ranking clergymen. The police have had to intervene in very few incidents of openly driven by homophobia, either for prevention or suppression (see p. 41-42).

According to data from the Hellenic Police²⁸, from 2010 to date, 3 homophobic demonstrations have taken place in Greece, according to Police records²⁹. Particular emphasis should be paid to the Bishop of Thessaloniki, who expressed his fierce opposition to the most recent Gay Pride in Thessaloniki (June 2012), calling upon the mayor to cancel the parade. In his announcement he stressed that he had gathered about 20,000 signatures from Thessaloniki residents, and had urged parents to keep their children away from such 'unnatural' demonstrations. This resulted in several Thessaloniki residents staging a counter-demonstration and heckling pride parade participants.

During the Thessaloniki Pride Parade in 2013, there was a small counter-rally that took place in a church yard the day before the parade.

²⁷ Greece, Athens Pride, 'Athens is ours', (*'Η Αθήνα δικιά μας'*), Press release, 2013, available at: www.athenspride.eu/index.php/org/deltia-typou/301-athens-pride-2013 (last accessed on 30 May 2014).

²⁸ Greece, Ministry of Citizen Protection Police Headquarters (Υπουργείο Προστασίας του Πολίτη, Αρχηγείο Ελληνικής Αστυνομίας), Response to NFP request for information, P.N.:3017/1/725-α/4.2.2014.

²⁹ Greece, Ministry of Citizen Protection Police Headquarters (Υπουργείο Προστασίας του Πολίτη, Αρχηγείο Ελληνικής Αστυνομίας), Response to application for information, P.N.:3017/1/725-α/4.2.2014.

F. Criminal law, hate speech

Hate speech in Greece is regulated exclusively by Law 927/1979 (FEK A 139, 28/06/1979). Those breaking the law are liable to imprisonment for up to two years and/or to fines. The law, however, only incriminates hate speech based on racial origin, nationality and (since a modification introduced in 1984) religion. Sexual orientation does not figure among the grounds on which hate speech is prohibited and, therefore, no specific protection is offered to LGBTs.

Moreover, Law 927/1979 has been idle for many years and no cases have been brought. The main reason for this was that, in its original form, the law provided that prosecution could only be initiated by an official complaint by the victim – addressee of hate speech. This requirement has been dropped in 2001 and now the magistrature may initiate proceedings on its own motion. This, however, has not produced the expected effects: by the end of 2007 still no judgment had been published by any court or tribunal on the basis of Law 927/1979. Interestingly enough, in the most extreme case of racial violence in Greece, where the perpetrator shot a number of foreign migrants killing two and injuring seven ‘because he hated foreigners’, he was convicted to double life imprisonment plus 25 years in prison. However, despite the prosecution describing him as a ‘racist murderer’, he was not charged with violation of the hate speech Law 927/79.³⁰

The only application of this law known by the author is a high profile case against an (ex) politician who authored a strongly anti-Semitic book; he was condemned in a judgment delivered in late November 2007. The 2007 judgment has been quashed on appeal, by judgment of the Athens Court of Appeal of 27 March 2009, on the grounds that it expressed the author’s ‘scientific position’.³¹ Since this first ‘application’ of the law another two cases have been decided on the same basis,³² but none on sexual orientation. In view of the above, it is clear that the chances for the existing law to be construed extensively by the judiciary in order to cover discrimination on the basis of sexual orientation are quite slim, if non-existent.

Prompted by the European Union Council framework-decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law in 2013, efforts were made to reform the above-mentioned legal framework, but none of them have borne fruit so far.

To begin with, the ruling right-wing New Democracy (*Νέα Δημοκρατία*) party drafted and tabled a draft law in 2013, modifying law 927/1979 without, however, making any mention of discrimination due to ‘sexual orientation’ or ‘gender identity’³³ Bills have also been tabled by the main opposition party Coalition of the Radical Left – SYRIZA (*Συνασπισμός Ριζοσπαστικής Αριστεράς - ΣΥΡΙΖΑ*),³⁴ as well as by Panhellenic Social Movement - PASOK, (*Πανελλήνιο Σοσιαλιστικό Κίνημα – ΠΑΣΟΚ*) (ex- ruling centre-left party) and Democratic Left Party - DIMAR, (*Δημοκρατική Αριστερά - ΔΗΜΑΡ*) (left-wing).³⁵ The latter two, in contrast to the New

³⁰ Greece, Left.gr, ‘Pantelis Kazakos: The perpetrator of the most gruesome racism crime before the incident in Manolada’ (*Παντελής Καζάκος: Ο δράστης του πιο μαζικού ρατσιστικού εγκλήματος, πριν τη Μανολάδα*), available at: <http://left.gr/news/pantelis-kazakos-o-drastis-toy-pio-mazikoy-ratsistikoy-egklimatos-prin-ti-manolada> (last accessed at 25 April 2014).

³¹ Greece, ‘Mass Media and Communication Law’ (*Δίκαιο Μέσων Μαζικής Ενημέρωσης*) 913/2009 Court of Appeal volume 3/2010.

³² Greece, NOMOS database available at: <http://lawdb.intrasoftnet.com>. Research carried out in February 2014

³³ Greece, Greek Parliament (*Βουλή των Ελλήνων*), ‘Law Proposal “Amendment of law 927/1979”, (*Πρόταση νόμου για την τροποποίηση του νόμου 927/1979*)’, 30 May 2013, available at: www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=56722b02-48f5-4820-99ac-0f1c1e5d835b (last accessed at 25 April 2014).

³⁴ Greece, Greek Parliament (*Βουλή των Ελλήνων*), ‘Law Proposal for combating racism’, (*Πρόταση νόμου για την καταπολέμηση του ρατσισμού*)’, 4 June 2013, available at: www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=4cc23309-71ed-423f-8478-88f9b064333d (last accessed at 23 April 2014).

³⁵ Greece, Greek Parliament (*Βουλή των Ελλήνων*), ‘Combating racism and xenophobia’ (*Καταπολέμηση εκδηλώσεων ρατσισμού και ξενοφοβίας*)’, 30 May 2013, available at: www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=56722b02-48f5-4820-99ac-0f1c1e5d835b

Democracy (*Néa Δημοκρατία*) draft law, explicitly included discrimination due to sexual orientation and gender identity. These legislative initiatives have been unsuccessful, since the bills have never even been introduced for debate in Parliament to this date.

In November 2013, the government addressed the matter again, submitting another draft law much improved in comparison to the one submitted in May. Nevertheless, this second draft law was also fragmentary in that it excluded sexual orientation and gender identity (article 1, para. 1). Be that as it may, neither this legislative initiative to amend the insufficient n. 927/1979 law was successful, as it too has not yet been introduced for debate in Parliament to this date.

As stated in Section A above, Law 3304/05 does foresee penal sanctions for those who discriminate in the course of the provision of goods or services. This, however, requires a material act of discrimination and does not cover pure hate speech.

Victims of hate speech may use the Civil Code remedies if their name, personality, right to family life etc are violated. Civil actions, however, are aimed at either forcing perpetrators to stop their prejudicial actions (in the future), or awarding the victim damages (for prejudice already suffered). The former remedy has no preventive effect whatsoever, while the latter is of limited efficacy, as it requires the proof of effective damage suffered by the claimant, as a consequence of the acts of the defendant. Therefore, civil law actions are only of limited interest for the protection of LGBTs. Moreover, it is virtually impossible to identify the cases decided on the above provisions of the Civil Code which concerned specifically LGBTs.

In the Penal Code, homophobia has become a general aggravating factor following Law n. 3719/08 (article 23), which modifies article 79(3) of the penal code, concerning the calculation of the penalty. According to the newly introduced provision ‘any [illegal] act motivated by hatred national, racial, religious, or hatred due to the differing sexual orientation against the victim constitutes an aggravating factor’. The above aggravating factors are to be taken into account in addition to the basic criteria used for assessing the perpetrators personality, namely, a) the causes and the objectives of their action, b) the degree of development of their character, c) their individual and social circumstances and prior life, and d) their conduct during and after the perpetration of the act. Being an aggravating factor, the existence of sexually-related motivation needs to be positively proven by the complainant or the attorney in charge. An overview of the two major legal data bases in Greece shows no hits concerning the application of this new provision.

The latest development is the 2013 amendment (by article 66 of Law 4139/2013) to Article 79(3) of the Penal Code which now states that the commission of a criminal act motivated by hate on the grounds of race, colour, religion, origins, national or ethnic origin or sexual orientation or gender identity constitutes an aggravating circumstance and the sentence imposed may not be suspended. Although, this legislative modification is a positive step, it should be noted that this legal provision cannot be applied by the police or the prosecutor at the stage of the investigation and the ensuing criminal prosecution of, and referral to trial for, racist crimes. It can be applied only at the stage of the court’s decision on the sentence after the guilt of the offender has been established.

Moreover, there is nothing in the Greek legal order which could possibly compare to the Lithuanian law recently adopted. If a comparable law has ever existed in Greece, it would date back to the Colonels’ regime (toppled in 1974) and has long been forgotten.

Monitoring the escalation of racist attacks against refugees, migrants, LGBT and other

vulnerable people in the last few years, and also the lack of a formal and reliable mechanism of recording racist incidents, the UN Refugee Agency and the National Commission for Human Rights took the initiative and established in the summer of 2011 the Racist Violence Recording Network, which today numbers 30 non-governmental organisations and other bodies that provide legal, medical, social or other support services and come into contact with racist violence victims. The Racist Violence Recording Network has already issued its report for 2012,³⁶ just like its June 2013 “Positions on antiracist legislation.”³⁷ The report for 2013 is expected to become public in early 2014. For the period up to the current day we should point out an increase in incidents of violence against the LGBT community, which may be congruent with the rise of Golden Dawn’s popularity. In addition, we should also stress the fact that more and more such acts of violence against LGBTs are being reported and recorded. However, the authorities’ inertia and sometimes unwillingness to investigate crimes that manifestly have homophobic motives and the subsequent impunity of perpetrators, has resulted in an increase in homophobic acts of violence and in an escalating intensity of their brutality.

For example, in 2012, there were strong protests against the staging of Terrence McNally’s *Corpus Christi* play, put on at Hitirio Theatre. The play tells the story of 13 young men, an allusion to Jesus’s story, including Judas, kissing him on the lips. The play caused a fierce reaction. To start with, the Holy Synod of the Greek Orthodox Church convened and declared that this play was blasphemous, urging the Greek people to decry it.³⁸ Every day there were people protesting outside the theatre, with Golden Dawn MPs taking the lead. According to reports in the press, the actors and director were jeered at and threatened on a daily basis. Outside the theatre, protesters scuffled with riot police forces, and a journalist was reportedly beaten and verbally abused, while police forces allegedly stood by. All the above led to the play’s ultimate cancellation.³⁹ There were no consequences for any of the misdemeanours perpetrated, nor any disciplinary action taken against the police officers who merely stood by without intervening.⁴⁰

³⁶ Greece, Racist Violence Recording Network (*Δίκτυο Καταγραφής Περιστατικών Ρατσιστικής Βίας*), ‘2012 Annual Report’, 16 April 2013, available at: <http://rvrn.org/2013/04/2012-annual-report/> (last accessed at 25 April 2014).

³⁷ Greece, Racist Violence Recording Network (*Δίκτυο Καταγραφής Περιστατικών Ρατσιστικής Βίας*), ‘Positions on antiracist legislation’, 18 June 2013, available at: <http://rvrn.org/2013/06/positions-on-antiracist-legislation/> (last accessed at 25 April 2014)

³⁸ Greece, Greek Orthodox Church (*Εκκλησία της Ελλάδος*), (2014), ‘Second Meeting of the Holy Synod of the Greek Orthodox Church’ (*Δεύτερη Συνεδρία της ΔΙΣ*), Press Release, available at: www.ecclesia.gr/greek/holysynod/holysynod.asp?id=1516&what_sub=d_typou (accessed at 25 April 2014).

³⁹ Greece, Greek Left Review, ‘Protests by Golden Dawn, Religious groups cancels theater premiere’ (*Διαμαρτυρία Χρυσής Αυγής, Θρησκευτικές ομάδες ακυρώνουν θεατρική πρεμιέρα*), Press Release, 19 October 2012, available at: <http://greekleftreview.wordpress.com/2012/10/page/3/> (accessed at 25 April 2014).

⁴⁰ Greece, Hellenic League for Human Rights (*Ελληνική Ένωση για τα Δικαιώματα του Ανθρώπου*) ‘God doesn’t need penal prosecutions’, (*Ο Θεός δεν έχει ανάγκη εισαγγελεία*), Press release, 18 October 2012, available at: www.hlhr.gr/index.php?MDL=pages&SiteID=713,

G. Transgender issues

Transgender people under the Greek legal system are not specifically legislated on. Research conducted on the electronic legal databases using the words ‘transgender’ or ‘transsexual’ found no hits except for the occasional reference to extra-conjugal relationships in the course of divorce and child custody proceedings. It is not clear whether transgender people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on the basis of sex. What seems certain, however, is that no judicial or other equality body decision has ever been issued concerning transgender issues.

The first piece of legislation that expressly stipulates the case of gender identity is article 66 of Law 4139/2013, which now states that the commission of a criminal act motivated by hate on the grounds of race, colour, religion, origins, national or ethnic origin or sexual orientation or gender identity constitutes an aggravating circumstance and the sentence imposed may not be suspended (article 79(3) of the Penal Code).

This notwithstanding, gender reassignment surgery is a tangible reality. Some plastic surgeons do operate in Greece, but most transgender people would rather go to the UK, Canada or the Russian Federation. In 2006 the Social Security Agency (*Ιδρυμα Κοινωνικών Ασφαλίσεων*, IKA), the biggest pension and healthcare fund in terms of affiliates, was reported to have paid for a sex reassignment surgery carried out in the Netherlands. This has raised severe criticism among the vast majority of the population, given that IKA and all other funds tend to be quite tight-handed with most mainstream treatments.⁴¹ This negative reception together with the fact that this was an isolated case, may explain that, despite our best efforts, we were unable to gather any more information concerning this case, either from IKA itself or from LGBT associations. It is also worth noting that the website of the transgender association (Solidarity Association of Greek Transgender and Transsexuals) makes no mention of the event or of the conditions pertaining to it.

Once gender modification has been carried out, then it is possible to ‘change’ names, according to Law N. 344/1976. This is relatively straightforward and requires a judicial decision rendered by a one-judge tribunal, following a single-party (non-adversarial) procedure. For this it is necessary a) to have undergone a successful sex reassignment surgery, b) to submit a medical report by a gynaecologist testifying to the modification and c) to present two testimonies of the previous gender situation of the person. No statistics are available, as these are judicial decisions which never get published.

After the identity of the person (gender and name) has been changed, then s/he may get married to someone of the (now) opposite sex. Again, no statistics are available, as these are celebrated and registered as ‘normal’ weddings between heterosexuals.

In recent years, hate attacks against transgender people have been on the increase; and transgender individuals have reported attacks by the police. In the summer of 2013 according to the Greek Transgender Support Association, between 50 to 60 transgender women in Thessaloniki were arrested and forced to undergo HIV testing⁴². During their detention they were subjected to abusive and discriminatory remarks. Many of these transgender women were accosted by the police and taken to police stations where they were detained more than once. The transgender women have pressed charges, but they have not gone through the system yet (February 2014).

⁴¹ Greece, 10%, ‘Identity, Intersex and health matters’, (*Ταυτότητα φύλου, διεμφυλικότητα και θέματα υγείας*), 4 November 2012, available at: www.10percent.gr/stiles/h-gnwmh-tou-10/3002-2012-11-04-22-00-04.html (last accessed at 25 April 2014).

⁴² Greece, Greek Transgendered Support Association (*Σωματείο Υποστήριξης Διεμφυλικών*), ‘Arbitrary arrests of transgender people and unlawful detention of the defender of their rights’, (*Αυθαίρετες προσαγωγές τρανς ατόμων και παράνομη κράτηση υπερασπίστριας των δικαιωμάτων τους*), available at: www.transgender-association.gr/

H. Miscellaneous

From the analysis above it becomes clear that homophobia and discrimination on the basis of sexual orientation are still issues which are only marginally dealt with by the Greek legal system. Greece has fulfilled its obligations under the relevant EC directives in a ‘minimalist’ and procedurally cumbersome manner. The questions raised and the statistics required by the present study are already extremely far-reaching for the Greek legal system.

The Ombudsperson regularly observes in its annual reports as an equality body that the non-existence or the existence of few declared incidents of discrimination (based on sexual orientation) should not be misinterpreted: it is more a sign that society is not aware of the problem of homophobia and of the ways to deal with it, rather than that the problem does not exist. Moreover, it shows a) indifference on the part of non concerned parties and b) disappointment and mistrust on the part of parties directly concerned (LGBTs and their organisations). This tacit acquiescence of homophobia is nurtured by a number of factors which are peculiar to Greek society.

First, one has to underline the important role the Christian Orthodox Church plays in Greek society and – regrettably – in Greek politics. When the socialist government, complying with basic data protection principles, decided to issue new ID cards omitting the religion of individuals, the Church managed to collect over one million signatures and to organise massive demonstrations against the measure. The then head of the Greek Church, Mr. Christodoulos, had repeatedly expressed himself in an openly homophobic way.⁴³ Other clergymen have done so even more radically. Therefore, people who do follow the teachings of the Greek Orthodox Church are prone to adopt some kind of homophobic stance. Mr. Christodoulos passed away in February 2008. His successor Mr. Jeronimos has a reputation of being more progressive, but this remains to be ascertained by the facts. Despite Jeronimos’s more conciliatory attitude, several clerics (including bishops) continue their public homophobic rhetoric.

Second, many high-profile politicians, among them serving Ministers, have openly expressed disdain towards LGBT people and their claims. An ex-deputy Minister of Employment (the Ministry charged with the application of Directive 2000/78) was reported to have dismissed the idea of civil wedding for same-sex partners with the words: ‘I adore talking romantically to a woman, why should I have to talk to the god-damn gay electrician?’ and that ‘I will oppose same-sex marriage til I die. It comes as no surprise, therefore, that in a survey conducted by ELEFTHEROTYPIA, a left-wing newspaper, on politicians of all ages from the main political parties, on the occasion of the same-sex marriage of the Norwegian Minister of economics (in January 2002), unanimously conceded that such a move would qualify as political suicide in Greece. It may be that their opinion was not based only on personal judgment, but also on a factual precedent: in 2000 a member of the (then) opposition party was allegedly involved in some same sex sexual relationship and, despite the party leader’s statements to the contrary, was forced to resign.

⁴³ Greece, BBC Greek.com, ‘Mr. Christodoulos supporting Buttiglone’ (‘Στο πλευρό Μπουτιλιόνε ο κ. Χριστόδουλος’), 31 October 2004, available at: www.bbc.co.uk/greek/domesticnews/story/2004/10/041031_christodoulosbuttiglione.shtml, (last accessed at 23 April 2014) and Greece, In.gr, ‘Archbishop Christodoulos supports the position of Buttiglone’, (‘Συντάσσεται με τις θέσεις Μπουτιλιόνε ο αρχιεπίσκοπος Χριστόδουλος’), 31 October 2004, available at: <http://news.in.gr/greece/article/?aid=576669>, (last accessed at 23 April 2014), Greece, Greek Orthodox Church (Εκκλησία της Ελλάδος) ‘Speech to the French Notaries: The Role of the Notary in the Third Millennium Family’, (‘Ομιλία στο Συνέδριο των Γάλλων Συμβολαιογράφων με θέμα : Ο συμβολαιογράφος και η οικογένεια της 3ης χιλιετίας’), 18 October 2006, available at: www.ecclesia.gr/greek/archbishop/default.asp?id=547&what_main=1&what_sub=5&lang=gr&archbishop_heading=Ευρώπη, (last accessed at 25 April 2014).

Thirdly, the media often promote homophobic imagery. In every TV series, contest or other TV programme, there is always an exaggerated and ridiculous LGBT character. In the news and related programmes, more often than not LGBT issues are discussed without the participation of LGBT representatives. The National Radio-Television Council (*Εθνικό Συμβούλιο Ραδιοτηλεόρασης*), an independent authority, charged with monitoring the quality of radio and TV broadcasts, has fined programmes with vaguely homosexual content, but has never intervened against ridiculous gay characters or indirect or concealed homophobic speech.⁴⁴

The most controversial of these decisions, however, whereby a broadcaster was fined for showing a homosexual kiss, was quashed by the Highest Administrative Court (*Συμβούλιο Επικρατείας*) in its judgment 3490/2006 (Nomiko Vima (2007) 1676), whereby it was held that ‘the representation of an existing social reality, representative of a social group which, together with many other, form part of an open and modern democratic society [...] needs to be fully protected’. Such a finding, however, did not prevent the employees (orchestra) of the National Lyric Theatre to go on strike requiring the elimination of a homosexual kiss from the Opera play ‘Rousalka’ performed by them. Against this action, a complaint was made to the Greek Ombudsperson (5027/13.3.2009) who duly condemned it.

A more anecdotal, but most revealing facet of the dormant homophobia existing in Greece, is the case brought by some inhabitants of the island of Lesbos against Lesbian organisations for the use of the term Lesbian. They claimed that their historical and regional identity and personality were illegally offended by such a use. The Athens Court of first instance, however, dismissed the action for lack of standing of the plaintiffs, since the term lesbian is not connected to the personality of any of them (Athens CFI 6310/2008, Chronika Idiotikou Dikaiou [2008] 887).

In 2010, in its 128/2010 decision, and despite the Highest Administrative Court decision mentioned above, the National Radio-Television Council imposed a 30,000 euro fine on a television channel because it broadcast the film *Straight Story*, a Greek film that depicts an imaginary world in which prevailing sexual behaviour patterns are the other way round. The National Radio-Television Council deemed that because of the film’s subject matter and the damage it can inflict on young people, it ought to have been broadcast after the 11pm watershed.

Fourthly, homophobia is institutionalised in the Penal Code. Article 347 of the Penal Code incriminates anal intercourse between men a) when induced by an abuse of a relation of dependency, b) when one party is under the age of 17 or when it serves to generate profit and c) when practised on a professional basis. All three provisions merit a brief comment (cases a, b and c correspond to the three paragraphs of Article 347).

(a) There is no obvious reason why the abuse of a relation of dependency should be treated differently depending on whether it ends up in ‘anal intercourse between men’ or to any other kind of sexual harassment – homosexual or heterosexual. Moreover, this is clearly a violation of both Directive 78/2000 (and Law 3304/05) and of Directive 72/207/EEC, as modified by Directive 2002/73/EC.

(b) The age of consent for heterosexual sexual acts is 16 years. Therefore, the requirement that the parties in a homosexual relationship should be over the age of 17 violates the principle of non discrimination, as recognised by the Commission of the European Court of Human Rights in its report of 1 July 1997, in Case *Sutherland v. UK* (Articles 8 and 14 of the Convention).

⁴⁴ See e.g. Decisions 371/11.11.2003 and 44/29.01.07, each imposing a 100.000 euro fine for the same TV serial, which showed two men kissing, available at: www.esr.gr/arxeion-xml/pages/esr/esrSite/listweb?last_clicked_id=&no_of_links=2&date_all=&date_from=&date_to=&meso=&velocity=&station=&ekpompes=&thema=&ste=&num_apof=371-2003&order=date_publ+desc (last accessed at 25 April 2014).

(c) The prohibition of homosexual intercourse for profit or on a professional basis is contrary to Directive 78/2000 (and Law 3304/05) and to Law 2734/99 regulating prostitution.

The Greek Homosexual Community (EOK) took action against this provision and in 2006 it has posted on its website an on-line petition for its abolition.. The law remains in force (February 2014) despite several initiatives, including a parliamentary question on this topic⁴⁵.

Fifth, homophobia is actively cultivated within the police force in several ways. For one thing, ‘manhood’ is idealised as an absolute virtue among police officers. More alarmingly, however, several police manuals, dating back to the pre-WWII era, still present homosexuality either as a mental disorder or as an attribute linked with criminality.⁴⁶ At this level, some ‘subtleties’ allowed by Greek language come to the fore. Active gay men (*κωλομπαράδες*) are much more tolerated (and at times respected) than passive gay men (*κίναιδοι, πούστηδες, πουστάκια*).

Sixth, sexual orientation education is completely absent from public (and private) schools, colleges etc. Information about sexual practices, sexual health etc is basically available on a peer to peer basis and through the television (for which see the previous paragraphs) and, increasingly, the internet. Also, parents (especially fathers) of boys at the age of puberty, regularly cultivate aversion and disdain, verbally or else, towards homosexual practices.

Last but not least, the Government is turning a blind eye to substantiated claims by LGBT and other organisations and parties. Therefore, the 1997 petition to the Minister of Justice for several legislative changes aimed at fostering equal treatment, received no response. This, notwithstanding the fact the claims were endorsed by Amnesty International and, more importantly, by the National Commission for Human Rights (*Εθνική Επιτροπή Δικαιωμάτων του Ανθρώπου*). Some of these issues (notably the right to same-sex marriage) were put forward by a left-wing political party in a question to Parliament (16-12-05), to which the (then) Minister of Justice swiftly replied that ‘social conditions are not yet mature for the legal recognition of same-sex couples’.⁴⁷

For the period up to the current day we could point out the following facts:

After the issuance of the judgment by the European Court of Human Rights in the case of *Vallianatos and others v. Greece* on 7 November 2013, the applicants and supporting NGOs appealed to Greek MPs, requesting that the discriminatory law be amended and extension of civil unions to same-sex couples be made.⁴⁸ On 26 November 2013, the government made its intention known to amend the law accordingly⁴⁹ only to reverse its intention a day later, following reactions by bishops (which in some cases contained extremely homophobic

⁴⁵ Greece, Greek Parliament (Βουλή των Ελλήνων), Parliamentary question concerning the ‘Abolition of article 347 of Penal Code concerning prohibition of homosexual intercourse’ of MPs M. Giannakaki and G. Panousis (Democratic Left) addressed to Minister of Justice , α.π. 5001, 19 December 2013, available at <http://www.hellenicparliament.gr/UserFiles/c0d5184d-7550-4265-8e0b-078e1bc7375a/8301495.pdf>

⁴⁶ Greece, Iospress, ‘The criminalization of the homosexuality by the Hellenic Police’, (*Η ποινικοποίηση της ομοφυλοφιλίας από την ΕΛ.ΑΣ.*), available at: www.iospress.gr/ios2001/ios20010408a.htm (last accessed at 25 April 2014)

⁴⁷ Greece, Greek Parliament (Βουλή των Ελλήνων), Report (Έκθεση), available at: www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/M-dikaios-prak.pdf (last accessed at 25 April 2014)

⁴⁸ Greece, Greek Helsinki Monitor (Ελληνικό Παρατηρητήριο των Συμφωνιών του Ελσίνκι), ‘Public appeal to MPs for compliance with the decision of the ... for the civil union without discrimination’, (*Δημόσια έκκληση σε βουλευτές για συμμόρφωση με απόφαση ΕΔΔΑ για Σύμφωνο Συμβίωσης χωρίς διακρίσεις*), Press Release 12 November 2013, available at: <http://cm.greekhelsinki.gr/index.php?sec=192&cid=3832> (last accessed at 25 April 2014).

⁴⁹ Greece, Ta Nea (Τα Νέα), ‘Green light for civil unions and same sex couples’, (*Πράσινο Φως για το Σύμφωνο Συμβίωσης και για τα ομόφυλα ζευγάρια*), 27 November 2013, available at: www.tanea.gr/news/greece/article/5058026/prasino-fws-gia-to-symfwno-symbiwshs/ (last accessed at 21 April 2014)..

statements) and conservative MPs.⁵⁰ Minor government coalition partner Panhellenic Social Movement - PASOK, (*Πανελλήνιο Σοσιαλιστικό Κίνημα – ΠΑΣΟΚ*) and opposition Democratic Left tabled amendments to amend the law, while the main opposition party Coalition of the Radical Left – SYRIZA (*Συνασπισμός Ριζοσπαστικής Αριστεράς - ΣΥΡΙΖΑ*) tabled a bill to extend the civil unions to same-sex-couples and to improve the rights of civil union couples. To this date (mid-February 2014, the government is still preventing the discussion of these bills and amendments to avoid a vote in Parliament. As a result, 300 same-sex couples have decided to file a new complaint with the European Court of Human Rights.

Lastly, in May 2013, in view of the International Day Against Homophobia and Transphobia, the pan-European association ILGA-Europe released a report on LGBT rights and their respect in Council of Europe countries. Greece comes in at 25th place among 49 European countries. The best score was obtained by the UK (77), followed by Belgium (67), Norway (66) and a tie between Sweden, Spain and Portugal (65). France (64), which has recently legalised gay marriage came after, with Germany (54) lagging behind. Greece rated a mere 28, taking 25th place, much higher than Italy (19), neighbouring Bulgaria (18) and FYROM (13), but ten points lower than Albania (38). The lowest scores belonged to Monaco and Moldova (10), while Russia (7), Armenia and Azerbaijan (8) emerged as the worst countries for LGBTI rights. Details on Greece's performance are as follows: family recognition 8%, laws and policies against discrimination 13%, legal recognition based on gender 21%, protection against hate crimes or hate speech 36%, asylum processes 50%, and respect of freedom of assembly and expression 100%.

It may be that society is not yet mature and shies away from recognising sexual orientation as a factor of discrimination. According to the results of the EU survey on discrimination for the year 2007, Greeks do recognise that LGBTs are vulnerable to discrimination, but few Greeks admit being friends with LGBTs and few believe that measures are necessary for tackling such existing discrimination. Yet, all the factors briefly mentioned in the previous paragraphs act as impediments to the maturing of society and lock LGBT people in a situation of unspoken and widely tolerated discrimination

⁵⁰ Greece, Ta Nea (*Τα Νέα*), 'ND freezes law on civil union concerning same sex couples' ('Στο ψυγείο λόγω αντιδράσεων βουλευτών της Ν.Δ. το σύμφωνο συμβίωσης για τα ομόφυλα ζευγάρια'), 28 November 2013, available at: www.tanea.gr/news/politics/article/5058453/ena-bhma-mpros-ena-pisw-gia-ta-omofyla-zeygaria/ (last accessed at 23 April 2014)

I. Good Practices

Despite the stagnant situation described above, it is possible to identify a few practices which do show some openness and allow for some optimism.

The first such practice is the one introduced by the Agency of Social Security (IKA) which, under certain conditions, authorises and pays for gender reassignment surgery (see above para. 0). IKA is by far the biggest social security and health fund in Greece and its practices are likely to be followed by all other funds when a similar case arises.

Another fact which shows some openness is the fact that, under the auspices of the 2007 European Year for Equal Opportunities for All, each country had to indicate two 'persons of the year'. For Greece, one of the two persons chosen was Ms Betty Vakalidou, a transsexual businesswoman and writer, who has been prostituting herself for many years.⁵¹

Sadly, there is nothing else to add about improvements in good practices regarding the LGBT situation in Greece.

⁵¹ Greece, GayWorld.gr, 'Betty Vakalidou, The person of the year 2007' (*Μπέττυ Βακαλίδου: Το πρόσωπο της χρονιάς 2007*), Press release, 5 November 2007, available at: www.gayworld.gr/index.php/news/745-mpetty-vakalidou-to-prosopo-tis-xronias-2007 (last accessed at 24 February 2014).

J. Intersex

Under the Greek legal system, intersex people are not specifically legislated on. No presidential decree or ministerial decision has ever dealt with the status of Intersex people, and no judicial decision has ever been issued⁵². According to the legislation in force, children cannot be without a gender marker on their birth. Parents are obliged to register new-born children within a period of 10 days after the birth under one sex⁵³ and intersex people are registered under the sex that prevails.

It is also not unclear whether intersex people are covered by legislation prohibiting discrimination on the basis of sexual orientation or on basis of sex. The issue has not been addressed in case law or by the competent equality bodies⁵⁴. So far, intersex discrimination is not covered under national non-discrimination policies.

There are no official data, statistics or other official information from the competent Ministry of Health about gender reassignment surgeries in Greece.⁵⁵

⁵² Sources consulted include legislation in force and case law.

⁵³ Greece, Law 344/1976, Article 20 'Registry office and certificates' (*Περί ληξιαρχικών πράξεων*), (OG A' 143/11.6.1976),

⁵⁴ Sources consulted include legislation in force, case law and reports of equality bodies.

⁵⁵ Sources consulted included the Ministry of Health (Υπουργείο Υγείας), the Panhellenic Medical Association (Πανελλήνιος Ιατρικός Σύλλογος) and the Greek Transgendered Support Association (Σωματείο Υποστήριξης Διεμφυλικών).

Conclusions

Homophobia and discrimination on the basis of sexual orientation remain, to a large extent, ‘unspoken’ legal issues under the Greek legal system. While the social realities are there, the legal system is catching up with great delay and, often, in a (deliberately) inefficient manner.

Firstly, in Greece, discrimination on the basis of sexual orientation is dealt with together with all other forms of prohibited discriminations, if at all.

Secondly, Greece has fulfilled its obligations under the relevant EC directives in a ‘minimalist’ and procedurally cumbersome manner. The law transposing the equality directives into Greek law provides for three (!) different equality bodies with pretty much the same powers, but clearly different standing. The Greek Ombudsperson is a well-respected independent body, active for several years in most fields of public life in Greece, while the Equal Treatment Committee is an underperforming ‘sub-department’ of the Ministry of Justice virtually unknown to anyone. The Employment Inspection Body, on the other hand, is more of a ‘police’ body charged with negative overtones, thus making recourse to it quite prohibitive for employees who do not wish to start an open war with their employers. Moreover, the existence of three separate bodies, procedures, sets of requirements etc, negatively affects transparency and accessibility. The legal actions provided for by the law are pregnant with procedural hurdles and uncertainties.

Thirdly, under Greek law no ‘family’ exists outside formal marriage. This is true both for same-sex and for opposite-sex couples. Therefore, any perspective for recognising residence or reunification rights to same sex partners of LGBTs is formally excluded, until family law is reviewed. This is irrespective of whether the sponsor is Greek, an EU citizen or a third country national.

Fourth, transgender and transsexual people are a legal ‘non-issue’: no legal text directly refers to any aspects of their condition with the exception of Law N. 344/1976, that makes it possible for transgender people to change their name after having undergone sex-reassignment surgery. No problems have ever been reported regarding this procedure.

Fifth, during the last nine years asylum, as an institution, has suffered severely in Greece. Therefore, cases of protection offered on the grounds of prosecutions based on of sexual orientation, should be extremely rare, if non-existent.

Sixthly, Law 927/79 on hate speech does not cover discrimination on the basis of sexual orientation and – in any event – has never been used for any other grounds of hate speech or discrimination, except for once.

All the above can be explained, but not justified. Despite Greece having a non-negligible number of LGBT people, society is quite unaware of, or indifferent about, discrimination and harassment, verbal or material, suffered by these people. Many LGBTs prefer either to dissimulate their sexual preferences or to endure maltreatment in silence. In a country where youth unemployment skyrocketed to 50% in 2013, few LGBT workers are willing to risk coming out at their workplace. From the many undesirable or suboptimal situations that people are required to cope with in Greece, maltreatment of LGBTs is one. As the Ombudsperson put it in its 2005 Annual Report as an equality body,

most of the complaints that reached the Greek Ombudsperson concern discrimination based on reasons whose publication, would not usually cause additional social distress to the offended parties (as for example age or disability). The relative ignorance, fear of social exposure or other suffering caused by unofficial sanctions or social pressure in cases where a complaint for

*unjustified discrimination is filed (e.g. by a public school teacher on grounds of sexual orientation), in addition to the relatively low representation of persons from visible minorities on the staff of the Greek administration may explain the reduced influx of serious complaints. The smaller number of complaints itself cannot however be seen as proof of the non-existence of serious phenomena of illegal discrimination.*⁵⁶

Therefore, there has been no judgment by any court or tribunal specifically on discrimination on the basis of sexual orientation. More strikingly, despite the existence of several protection mechanisms and bodies, extremely few cases actually reach the specialised ‘equality bodies’ or courts. Even when this does happen, it is difficult to follow up the outcome of each case, with the exception of cases dealt by the Ombudsperson.

The virtually non-existent number of cases brought before the bodies set up by Law 3304/05 may be explained by two factors. First, the very existence of the Law (and its bodies) has gone to a large extent unnoticed by a significant proportion of the population. This means that three years after the adoption of the law, the three equality bodies and the ESC, (Economic and Social Council of Greece) all charged with disseminating the law, as well as the NGOs involved, are doing poorly. Secondly, on many occasions, people (or organisations) who do know about the Law, prefer to invoke it before European Institutions (the Commission and/or the Parliament) or to use as a means of political pressure (high visibility – low cost), Ombudsperson rather than make use of the procedural rights recognised by the Law. This shows a fundamental distrust for the procedures and bodies involved – which may be justified in view of the very poor visibility, let alone effectiveness, of these bodies (again, the Ombudsperson may be the only exception).

A further observation, which in part explains the fact that the organisations involved are not as active as one would expect, is that they often are ‘one door, many doorbells’, i.e. the same persons bear various labels and are charged with all sorts of responsibilities and functions.

Finally, the active role of the Greek Orthodox Church in social and political life acts as an important obstacle to opening up the debate about sexual orientation.

⁵⁶ Greece, Ombudsperson (Συνήγορος του Πολίτη), Annual Report (2005), available at: www.synigoros.gr/resources/docs/200_synig_2005_32sel_engl_intern.pdf, (last access at 30 May 2014)

Annex 1 –Case law

Case title	The European Court of Human Rights (Grand Chamber) held that the exclusion of same sex couples from law 3719/2008 on civil unions violates articles 8 and 14 of ECHR.
Decision date	7 November 2013
Reference details (reference number; type and title of court/body; in original language and English [official	The European Court of Human Rights (Grand Chamber) Vallianatos and others v. Greece Applications no. 29381/09 and no. 32684/09.
Key facts of the case (max. 500 chars)	On 2008 Law no. 3719/2008 came into force. It made provision for an official form of partnership called a “civil union”. Under section 1 of that Law, a civil union could only be entered into by two adults of opposite sex. Relying on Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life), the applicants complained that the fact that civil unions were designed only for different-sex couples infringed their right to private and family life and amounted to unjustified discrimination between different-sex and same-sex couples.
Main reasoning/argumentation (max. 500 chars)	The Court reiterated that same-sex couples were just as capable as different-sex couples of entering into stable committed relationships. It also pointed that the State, under Article 8, had to take into account developments in society and the fact that there was not just one way or one choice when it came to leading one’s family or private life. The Court considered that the Government had not offered convincing and weighty reasons capable of justifying the exclusion of same-sex couples from the scope of Law no. 3719/2008. It therefore held that there had been a violation of Article 14 taken together with Article 8.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The European Court remarked that there was no consensus among Council of Europe member States but that a trend was currently emerging towards introducing forms of legal recognition of same-sex relationships. Of the 19 States which authorised some form of registered partnership other than marriage, Lithuania and Greece were the only ones to reserve it exclusively to different-sex couples. It followed that, with two exceptions, Council of Europe member States, when they opted to enact legislation introducing a new system of registered partnership as an alternative to marriage, included same-sex couples in its scope.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<ul style="list-style-type: none"> - Violation of article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights - The Court held that Greece was to pay each of the applicants €5,000 in respect of non-pecuniary damage - As a result of the judgment, Greece has to modify its legislation in order to include same-sex couples.
Proposal of key words for data base	Civil unions, same-sex couples
Text in Greek in attachment	

Case title	CFI (upper chamber) Rhodes, case 14/2009 (Hronika Idiotikou Dikaiou (2009) 617) Court declared the first same sex marriage in Greece legally non-existent
Decision date	30-4-2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision no. 114/2009; Πολυμελής Πρωτοδικείο Ρόδου (Multi-Member Court of First Instance of Rhodes)
Key facts of the case (max. 500 chars)	The Court accepted the civil action submitted by the Prosecutor of the Court of First Instance of Rhodes against a same-sex couple, requesting to declare as non-existing the civil marriage of the same-sex couple performed on 3/06/08 at the Mayor's Residence on the island of Tilos. The Court rejected the civil action filed by the Prosecutor against the Mayor of Tilos, due to lack of legal capacity to be made a defendant in the case (Art. 608 par. 2 of Code of Civil Procedure).
Main reasoning/argumentation (max. 500 chars)	Art. 12 of the ECHR and Art. 23 of the International Pact of New York (which was adopted by Law 2462/1997), make subsidiary references to the national law regarding the necessary conditions and qualifications in order to enjoy the right of marriage. National legislation, however, does not permit the marriage of same-sex couples, as the difference of sex is regarded as a necessary precondition for the existence of marriage, as perceived by the Greek legislator. In addition, the will of the legislator for the treatment of such situation was recently expressed in Law 3719/2008 on "legal cohabitation", which explicitly states in Art. 1 that it concerns only heterosexual couples.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A definition of marriage, as provided by the Greek Civil Law, is given by this decision, according to which it is only allowed for heterosexual couples.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The marriage was declared legally non-existent; the couple/defendants declared that they were going to submit an appeal.
Proposal of key words for data base	Marriage of same-sex couples

	Court imposes damages on Café/Restaurant owner for refusing entry to two men
Decision date	2006
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	MovΠρΘεσ 23238/2006 CFI (single member) Thessaloniki, case 23238/2006 (Armenopoulos (2006) 1402),
Key facts of the case (max. 500 chars)	Bouncer in Café/restaurant in Thessaloniki refuses entry to two men, without any reason linked to security. The acts of the bouncer are attributable to the owner of the premises. However, since plaintiff in the proceedings before the Court was only one of the two people, the judgment reasons on the basis of this person – therefore the second person is completely absent from the judgment and no express reference to the fact that they could have been seen as a homosexual couple was made.
Main reasoning/argumentation (max. 500 chars)	Despite the judgment being delivered after the entry into force of “the anti-discrimination Law” 3304/2005, its reasoning is exclusively based on the provisions of the Civil Code protecting personality, i.e. articles 57-59.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The protection of personality, according to the Civil Code, also covers the esteem that others show to the person concerned. By refusing entry into the premises of the Café/Restaurant, without there being any objective reason, such as e.g. some private function or the fact that the premises were full, the owner has shown lack of esteem to the plaintiff.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Damages for moral injury: €1000.

Proposal of key words for data base	Personality Protection, refusal to provide goods or services, damages
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Case title	Data protection Authority (Directive 95/46/EC – Law 2472/1997) imposes fine on insurance company for fiddling with sensitive personal data in order to refuse insurance coverage
Decision date	2008
Reference details (reference number; type and title of court/body; in original language and English [official translation if	Data Protection Authority, Case 3/2008
Key facts of the case (max. 500 chars)	Insurance company refuses to extend already existing insurance contract to cover life, on the basis that the individual concerned had been exempted from his military service because he had declared
Main reasoning/argumentation (max. 500 chars)	The fact that the person is homosexual does not impinge on his general health condition and therefore cannot, on its own (i.e. without further medical examinations) justify a refusal to insure. Therefore, processing of such data is not justified by the needs of
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The rules on data protection can be used to condemn the refusal to provide goods or services in cases this is done on account of sensitive data
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Fine (not damages) imposed 60,000 euros
Proposal of key words for data base	Refusal to provide goods or services, data protection, sensitive data, fine

Annex 2 - Statistics

Table A: Implementation of Employment Directive 2000/78/EC

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010-
Total complaints of discrimination on the grounds of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination	0	0	0	0	0	Ombudsperson Case n 2967/2005	0	0	0	0	10
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination	0	0	0	0	0	0	0	0	0	0	7
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination	0	0	0	0	0	0	0	0	0	0	0

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing)	-	-	-	-	-	-	-	-	-	-	-	0
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Table B: Freedom of Movement

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC	0	0	0	0	0	0	0	0	0	0				

Number of LGBT partners who claimed their right to residence but were denied this right	Not available													
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Table C: Asylum and subsidiary protection

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	20	20	20	20
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Number of LGBT individuals benefiting from asylum/subsidiary protection due	Not available													
Number of LGBT individuals who were denied the right to asylum or to subsidia	Not available													

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	20	20	20	20
Number of LGBT partners of persons enjoying refugee/subsidiary protection	Not available													
Number of LGBT partners of persons enjoying refugee/subsi	Not available													

Table D: Family reunification

	200	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing	Not available													
Number of LGBT partners of third country nationals residing in your	Not available													

Table E: Freedom of assembly

	200	200	200	200	200	200	200	200	200	200	201	201	201	201
Number of demonstrations in favour of tolerance of LGBT people, gay pride	1	1	1	1	1	1	1	1	1	1	13			
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0	0	0	3			

Table F: Criminal Law – Hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech	0	0	0	0	0	0	0	0	0	0				
Number of convictions regarding homophobic hate speech (please indicate range of sanctions)	0	0	0	0	0	0	0	0	0	0				
Range of sanctions issued for homophobic hate speech	-	-	-	-	-	-	-	-	-	-				
Number of non-criminal court cases initiated for homophobic	0	0	0	0	0	0	0	0	0	0				

Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the														
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	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court decisions in which homophobic motivation	0	0	0	0	0	0	0	0	0	0				

Table G: Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	20	20	20	20
Number of name change effects	Not available													

Number of persons who changed their gender/sex in your	Not available													
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Annex 3 – Institutions consulted

Public services	Answers received	Institutional role	Cases of law enforcement
The Greek Ombudsperson (Συνήγορος του Πολίτη)	√	N3304/05	One judged not founded
Labour Inspection Body S.E.P.E. (Σώμα Επιθεώρησης Εργασίας)	√	N3304/05	None
Equal Treatment Committee, Ministry of Justice (Επιτροπή Ίσης Μεταχείρισης, Υπουργείο Δικαιοσύνης)	×		None
Police Press Office (Γραφείο Τύπου Αστυνομίας)	×		
Police General department (Διεύθυνση Γενικής Αστυνόμευσης)	√		None
Asylum Department, Ministry of the Interior, Public Administration and Decentralization (Τμήμα Πολιτικού Ασύλου, Υπουργείο Εσωτερικών)	×		None
Department of civil and municipal Status, Ministry of the Interior, Public Administration and Decentralization (Διεύθυνση Αστικής και Δημοτικής Κατάστασης, Υπουργείο Εσωτερικών)	×		None
Department of Migration Policy, Ministry of the Interior, Public Administration and	√		None

Decentralization (Διεύθυνση Μεταναστευτικής πολιτικής

Υπουργείο Εσωτερικών		
The United Nations High Commissioner for Refugees (UNHCR), The UN Refugee Agency, Greece (Υπατη Αρμοστέα του ΟΗΕ για τους Πρόσφυγες)	×	None
General Secretariat for gender equality, Ministry of the Interior, Public Administration and Decentralization (Γενική Γραμματεία Ισότητας, Υπουργείο Εσωτερικών)	√	None
Permanent Parliamentary Committee on equality and human rights (Ειδική μόνιμη Κοινοβουλευτική Επιτροπή για την Ισότητα και τα Δικαιώματα του Ανθρώπου)	×	None

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓	✓	✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	✗ court decision		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from

										a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ⁵⁷	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	
EL	✓			✓	
ES			✓		
FI		✓			

⁵⁷ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ⁵⁷	All areas of RED ⁶		
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision”

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
				and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on 'incitement to hatred' and 'aggravating circumstances' covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category 'group of people', but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 66 of Law 4139/2013 provides for an aggravating circumstance in cases of hate crime based on sexual orientation and the sentence imposed may not be suspended.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Decentralization (Διεύθυνση Μεταναστευτικής πολιτικής Υπουργείο Εσωτερικών)		
The United Nations High Commissioner for Refugees (UNHCR), The UN Refugee Agency, Greece (Υπατη Αρμοστεία του ΟΗΕ για τους Πρόσφυγες)	x	none
General Secretariat for gender equality, Ministry of the Interior, Public Administration and Decentralization (Γενική Γραμματεία Ισότητας, Υπουργείο Εσωτερικών)	✓	none
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Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.